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ABSTRACT

Designed to assist secondary teachers and school systems in classroom instruction, in staff development workshops, and in curriculum design, this manual contains classroom and resource materials that have proven useful in teaching legal education. Although developed specifically for educators in Georgia, the activities can easily be used by teachers in other states. There are six major sections. The first section discusses the following approaches useful in teaching legal education: adversary, simulation, role-playing, Socratic dialogue, moral development, resource person, brainstorming, case studies, and field trips. Sections 2 through 6 contain learning activities and resource materials for: introducing the legal system and the law; teaching about constitutional law and the Bill of Rights; criminal law; family and juvenile law; and practical consumer law. For example, students analyze and discuss case studies about child abuse, role play an actual Supreme Court case, give an oral presentation on topics such as the Magna Carta or the Nuremberg Trials, listen to a police officer and other guest speakers, and write a consumer complaint letter. (RM)

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LINKING LAW TO LEARNING

INSTRUCTIONAL STRATEGIES MANUAL

GEORGIA CENTER FOR CITIZENSHIP AND LAW-RELATED EDUCATION
GEORGIA STATE UNIVERSITY
A Unit of the University System of Georgia
FALL, 1981

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INTRODUCTION

There is a major thrust in education today to involve students in learning experiences which relate to the development of good citizenship skills and attitudes. Its main goal is to enable young people to become effective in their roles as members of our society by providing them with insights which will motivate them to positive, intelligent action and support in their communities, and equip them with the essential performance skills. Law-Related Education addresses these citizenship goals.

LRE, a rapidly growing, nationwide movement, seeks to provide American youth with an understanding of the legal process and the legal system. Common objectives shared by all concern enhancing students' understanding of and commitment to justice, improving civic decision-making skills and encouraging responsible and knowledgeable participation in civic life. These objectives are met in part in on-site and simulated decision-making activities using factual data in assessing legal problems. A common assumption of these programs is that Constitutional, statutory and due process concepts and issues are better understood and appreciated when students, teachers and the legal community plan and work together.

Law-related projects have proliferated rapidly in the last ten years and there are now about 500 in the United States. These projects have attracted the support of a number of state and local bar associations, law schools, judicial organizations and units of state and local government including law enforcement agencies. The American Bar Association has provided significant leadership through the creation of a Special Committee on Youth Education for Citizenship which, since 1970, has stimulated interest, provided information and conducted curriculum research and development activities aimed at strengthening educational programs. Recently, U.S. Secretary of Education, Honorable T.H. Bell, reaffirmed the commitment of his department to the goals of Law-Related Education.

The Georgia Center for Citizenship and Law-Related Education (GCC-LRE) is an outgrowth of efforts of the State Bar of Georgia and the State Crime Commission (LEAA) to initiate LRE into four school districts in Georgia in 1978. These school systems have subsequently implemented high school LRE courses into their programs. Georgia State University received a federal grant in 1980 to formally establish a Center to assist these and three other systems in LRE teacher awareness, training programs development and coordinating relationships with civic and community legal agencies and services. The Center's services are now available to all school systems in Georgia to assist in LRE.

LINKING LAW TO LEARNING is designed to assist secondary teachers and school systems in individual classroom instruction, in staff development workshops, and in curriculum design. It consists of a diverse collection of materials that have proven useful in the teaching of law-related education. It has been designed to follow the general secondary curriculum related to citizenship, government, and other law-related education units and courses. Many of the materials can be adapted for use with middle grade students.

TEACHING STRATEGIES

IN LAW-RELATED EDUCATION

TITLE: A Variety of Approaches Useful in the Teaching of Law-Related Education

CATEGORY: Introduction to Law and the Legal System

DESCRIPTION: This section provides teachers with a useful array of teaching techniques and suggestions.

PUBLISHER: INVOLVEMENT: A practical Handbook for Teachers, Secondary Level. Vetter, Donald P., Paradis, Gerald W., and Ellery, "Rick" Miller, J & I -- Law-Related Education Program for the Schools of Maryland. The Auspices of the Maryland State Bar Association, 1976. Reprinted by permission.

ADVERSARY APPROACH - A SIMPLIFIED CLASSROOM TRIAL TECHNIQUE

Advantages:

1. By using ADVERSARY, the students can be introduced into trial proceedings without much of the complexity of doing a mock trial.
2. It saves much time. Generally ADVERSARY can be done very easily within one classroom period.
3. There are no minor roles. Each student is critically involved as a major character.
4. Since the students are working in triads, shy or reluctant people are not forced to role play or act in front of others.
5. This can be an ideal method of developing a full mock trial. Simply add the roles as you wish. For example, on day two, each side may have a witness or have a jury involved, etc.

Instructions

1. The activity can be done with any size class.
2. Arbitrarily divide the class into groups of three. If anyone is left over, have them act as observer.
3. Have each participant in each group decide upon a role, such as judge, plaintiff or defendant. They will rotate roles for three rounds.
4. Using the role descriptions below, read the brief statements about each role.
5. Select a case and distribute FACTS of the case to all of the groups. Do not disclose the ISSUE or the DECISION at this time. To extend this activity, simply bring in more cases.
6. Have the participants role-play within their individual groups. The plaintiff speaks first, then the defendant. The judge may ask questions before he makes his decision and gives his reasons.
7. Have judges explain decisions to the whole class.
8. It is likely that there will be more than one decision per case. Point out that, as in a real courtroom, there are many variables that enter into a decision; e.g., the judge, the testimony, how well the case was presented, etc.
9. Read ISSUE and DECISION to class, if appropriate.
10. Rotate the roles and repeat the process twice with a new case each time.
11. The following questions are suggested for debriefing the activity:

    1. Which is most difficult role to play? Why?
    2. How well (realistically) did the participants play their roles?
    3. What were the issues in this case?
    4. Were the judge's decisions "fair"?

Role Descriptions

JUDGE — The judge must see that both sides have a fair chance to present their cases. The judge should not interrupt or dominate the proceedings.

PLAINTIFF — This person has accused the defendant of doing or not doing something which he/she thinks is unfair. He/she is the one who has asked the court to hear the case. In a small claims court, the plaintiff is asking the judge to make the defendant pay her/him an amount of money (under $500). He/she speaks to the judge first.

DEFENDANT — This person has been accused by the plaintiff. He/she has been summonded into court and is probably appearing against his/her will. He/she listens to the accusation and then either tries to prove it untrue or gives reasons to justify his/her actions.

ADVERSARY APPROACH adapted from: Law in American Society Journal of the National Center for Law-Focused Education, Volume Two, Number Two, May, 1973. "Pro Se Court: A Simulation Game", Arlene Gallagher and Elliott Hartstein, pp. 26-30.

SIMULATION APPROACH

A simulation activity, involves participants in a hypothetical situation or setting that is based on a simplified but operating model of the "real world". The participants, in turn, are generally called upon to react to a specific predicament, process, or problem that has been singled out for emphasis in the simulated social environment or setting.

This instructional method tends to:

-- Build upon and further the development of a student's imagination, ingenuity, creativity, and/or critical thinking skills.

-- Promote the free expression and analysis of a student's attitudes, opinions, beliefs, and values.

-- Place the student in a situation or setting involving some particular problem, process, or predicament that is often found in the real world.

-- Call upon the student to assess the situation, to consider alternative courses of action and modes of behavior, and to test his or her decision regarding the matter under consideration.

-- Require careful preliminary planning by the instructor and initial warm-up exercises, trial activities, and preparation time for the participants.

-- Necessitate extensive debriefing and in-depth analysis of the experience of the participants by both the teacher and class following the completion of every activity.

WHY USE SIMULATIONS?

There are a number of distinct advantages associated with using simulations. Research studies, for example, indicate that these activities often produce high degrees of student interest in the subject matter under consideration. This can be attributed to the fact that simulation exercises present material to a class in a manner that is not only exciting and enjoyable but refreshingly different from the traditional approaches to instruction. In addition, these modes of instruction focus on academic subject matter that is generally relevant to the daily lives of students, provide students with a means of expressing and "testing out" their feelings and views, and encourage student-student interaction rather than the traditional teacher-student or teacher-student-teacher interaction pattern.

Many simulations also foster a cooperative spirit in students and promote empathy for, and understanding of, others. Through preliminary group planning activities and the actual enactments that call for the resolution of a specific predicament or problem found in the "real world", an exercise may be used to illustrate the advantages of cooperation, heighten student sensitivity to the feelings and welfare of others, and further a class' understanding of the problems faced by society and its various social groups.

Thirdly, simulations are, by their very nature, designed to teach communication, clarification, and critical thinking skills. Student interaction in an activity, for example, may not only heighten awareness of the effect of verbal and non-verbal behavior on others, but reinforce such communication skills as expressing oneself clearly and listening carefully to the view of others.

In facing the specific problems or predicaments posed in the exercises, students may also experience a number of attitudinal changes. They are likely to gain confidence in dealing with adversity and frustration, become more open to new experiences, learn to tolerate ambiguity, to develop patience, and exhibit a greater willingness to revise their position or behavior if they have been proven wrong. In addition, students may learn to think more critically. They are likely to improve their ability to analyze situations, to define alternative courses of action, to explore the consequences of each, to deal with chance happenings and bad luck, to evaluate their actions and decisions, and to accept valid criticism.

Exercises using simulations, also offer a fourth advantage over traditional forms of instruction. They are able to encourage in students feelings of efficacy regarding the world they live in. By having students work with simulated social processes and problems, many of the simulations, games, and role playing episodes are able to lead students to an awareness of the consequences of specific behaviors, of the force of chance and/or bad luck, and of the potential strength or group to influence or alter or alter our social or legal system.

Lastly, instruction based upon simulations, games, or role playing, offers insights into, and helps clarify, misinterpretations and misconceptions regarding the core values of American society and its subcultures, the processes and institutions associated with our social and legal system, and the concepts and ideas discovered through the study of history and related social science disciplines.

SIMULATION APPROACH adapted from: Gerlach, Ronald A., and Lamprecht, Lynn W. Teaching About the Law. Cincinnati, Ohio: The W. H. Anderson Company, 1975, pp. 213-215.

ROLE PLAYING APPROACH

A. Role playing has been used effectively by many teachers to help solve classroom interpersonal problems and to teach human-relations skills in the classroom. Role playing also has been used to facilitate subject matter learning through the dramatization of literary and historical works and historical or current events. In all these uses, role playing provides the student with a dramatic confrontation and clarification of (1) his/her relations with others, (2) his/her information about and expectations of society, (3) his/her evaluation of himself/herself and his/her life style, and (4) the ways in which academic material may be relevant to his/her daily tasks.

Basically, role playing calls for a student's stepping outside the accustomed role that he/she plays in life, relinquishing his/her usual patterns of behavior in exchange for the role and patterns of another person. This other role may be that of a real person or may be entirely fictitious. Role playing has a tremendous potential for the average elementary and secondary school classroom.

Students can examine and discuss relatively private issues and problems without anxiety. These problems are not focused on the self; they are attributed to a given role or stereotype. Thus, children can avoid the normal anxiety accompanying the presentation of personal matters that may violate rules and regulations. This experience may result in greater individual insights into behavior and a better understanding of the place of rules and behavioral standards. Such learning can best be accomplished in a nonjudgemental situation where "correct" solutions are not the goal.

Role playing may also be used to demonstrate less personal but pervasive problems between and among people and groups. Social problems, to the extent that they reflect conflict between man and man, can be dramatized fruitfully in the classroom. For instance, classroom portrayals of problems of prejudice may lead to greater understanding of the dynamics of this phenomenon and some clarification of ways of dealing with its occurrence. Such understanding need not be purely abstract, on the theoretical or moralistic level; it can include the alternative behaviors that are available when one is a witness to an act or feeling of racial, religious, or economic bias.

Further, small-scale examples of political events, instances of political decision making, or dilemmas facing criminals and courts of law can be examined in the classroom. These portrayals may help make the student aware of selected social problems and the human meaning for those involved. They may help him/her to examine thoughtfully different ways of resolving social and personal conflict and to identify the advantages and disadvantages of each path. The exercises may not reduce conflict, but they may give the student skills to deal with his/her world more effectively. He/she may come to see the ways in which some of these universal social issues are reflected in his/her own relations with other individuals and groups and how they bear upon the decisions he/she must make in his/her own life.

B. Principal Responsibilities of the Instructor

Role playing in the classroom works best when there is an attempt to follow a definite sequence of steps. The sequence outlined below allows for a logical ordering and development of the role-playing session. It has been tested successfully by teachers:

1. PREPARATION AND INSTRUCTION, the first stage, covers problem selection, warm-up, and general and specific instructions to participants and audience. It involves the selection by the teacher, with or without class help, of an issue or problem to be worked on. After selecting the problem, the teacher needs to warm up or relax the students and give them practice and security in public performance and expression. The explanation of the general problem situation should make clear the educational purposes of the drama and the relevance of the issue or problem for the entire class. The teacher is now ready to brief the actors, to explain in detail the exact role each of them will play. The final step in this stage is to delineate the roles of the audience, the students who are not acting out the dramatic roles. These students can observe the general interaction of actors, or they can be charged to watch for specific actors or for specific events.

2. DRAMATIC ACTION AND DISCUSSION, the second major stage, covers both the role playing itself and the subsequent discussion and interpretation of the action. Sufficient time should be allowed during the improvisation for students to become thoroughly immersed in the problem situation, so that they can take full advantage of the situation's promise for discovering and practicing alternative ways of acting. At the conclusion of the drama, it is important to bring the class back to everyday reality, to dissociate the actors clearly from the role they played. This is important so that critics and other students can concentrate on the role behavior and not on the actions or person of the actors. The post-role-playing discussion may take several forms and involve several different students or groups of students. The role players or the audience, or both, may contribute to an analysis of the dramatic session. A final important focus of this learning experience should be the student's ability to apply the examples and lessons of this new role behavior to his/her own interpersonal experiences.

3. EVALUATION, the final stage, must follow the enactment and discussion of the role-playing situation. In this stage the teacher and pupils review the successes and failures of their role-playing experience. The purposes, procedures, and effects of such a learning experience should be analyzed so that teacher and class can make decisions about the need for additional role playing or reenactment of the scene. The teacher will certainly want to make a further personal evaluation of the experience in the light of his/her original diagnosis and goals; she/he will want to consider what verbal and behavioral evidence there is to show that the students have learned from the experience.

ADAPTED FROM: Role Playing Methods in the Classroom by M. Chester and R. Fox, Copyright 1966, Science Research Associates, Inc.

SOCRATIC DIALOGUE APPROACH

A. Guidelines for Use of the Socratic Method

The role of the instructor should be that of a guide helping participants through questioning to examine and clarify their own views and opinions and to develop sound reasoning. Socrates held the belief that all men possess knowledge within themselves and that the role of the teacher is to help individuals bring forth this knowledge rather than to pass their own knowledge on to their pupils. Socrates believed that the activity of the learner's mind is essential to education and that knowledge must become a part of the individual's own experience before it is learned. Socratic method may be used effectively to conduct such activity or discussion groups, tutorial groups and seminars.

HOW TO PROCEED

1. Identify topics or issues or help participants identify topics or issues to be discussed. For example, the instructor can begin by describing a factual situation concerning a decision to build a nuclear power plant in a particular community. He/she can then ask the participants to identify the different and possibly conflicting interests that might be involved.

2. Initiate the discussion of the issues by means of carefully chosen questions which focus attention on the relevant issues. For example, the instructor might ask the class to discuss who would benefit from and who would bear the burdens of a nuclear power plant in a given community. The issues can be elaborated by developing in detail the answers suggested by the class. The class will have a greater interest in the issues if they have contributed to the discovery of answers to the questions.

3. Question and answer technique can be sued to help participants clarify their own ideas and to appreciate the implications of their ideas.

For example, suppose an individual endorses democratic decision-making procedures but says that persons holding certain opinions should not be allowed to vote or that results of a fair vote need not be enforced. The instructor might then generate critical analysis of these views either through further questioning of the individual who expressed them or by questioning other members of the class about the logical consistency of the views expressed.

4. Raise further questions to stimulate discussion about alternative solutions to a particular problem or lead participants to reflect upon how the principles formulated for a particular case could be applied to analogous cases. The instructor might also raise questions which promote thought about issues not given due consideration or neglected entirely in previous discussion. In short, by choosing carefully the questions he asks, the instructor can give shape, direction and momentum to a class discussion.

B. Principal Responsibilities of the Instructor

1. To identify or help participants identify issues or topics for discussion.

2. Through questioning guide participants to bring out their own views and opinions and examine and clarify these in an attempt to further refine or rethink this knowledge.

3. Encourage participants to participate freely.

SOCRATIC DIALOGUE APPROACH adapted from Handbook for Area Coordinators published by the Law in a Free Society project of the State Bar of California, copyright 1972.

MORAL DEVELOPMENT APPROACH

Kohlberg's Stages of Moral Development

Kohlberg's stages of moral development help teachers recognize the levels of moral awareness in the classroom. Kohlberg has found that moral awareness develops in a sequence of stages. People in all cultures progress through the same sequence. Stages are sequential and cannot be skipped.

Kohlberg found a universal and natural sense of justice that was intuitively known by a child. The particular aspect of justice expressed is evidence of the stage of moral growth. While movement through the stages is always toward a higher level of morality, progression is not automatic. Moral growth is facilitated as people interact with others. When students are exposed to discussion and the conflicting views of others, they have the opportunity to compare and draw new moral conclusions.

Kohlberg's first three stages describe a code of moral conduct based on external rewards and punishments, a dependent approach to behavior. In stages four through six, the moral reasons for behavior stem from personal beliefs and conscience, an independent approach to behavior.

The stages may also be classified by social orientation. The first two stages describe a preconventional morality level. At these stages, people are less influenced by the accepted norms of society. The third and fourth levels have a conventional orientation level. Both of these levels are tied to social expectations of behavior. The fifth and sixth levels are at a postconventional level. They support a morality which springs from personal conscience, not bound by convention.

In abbreviated form, the six stages of moral development are:

Stage 1 - "Avoid Punishment" orientation
Stage 2 - "Self-Benefit" orientation
Stage 3 - "Acceptance by Others" orientation
Stage 4 - "Maintain the Social Order" orientation
Stage 5 - "Contract Fulfillment" orientation
Stage 6 - "Ethical Principle" orientation

Kohlberg describes a Premoral Stage through which most students will have passed by the time they enter classrooms. At this stage, the person knows good as anything pleasant and bad as anything painful. Infants are premoral in their inability to understand rules, authority or consequences. Thus, there is no sense of obligation or of action in terms of "I should". The pleasure search is not impeded by any considerations whatsoever.

The six stages which Kohlberg outlines will more likely apply to school age children. The distinguishing characteristics of these stages are as follows:

STAGE 1 -- "Avoid Punishment" orientation. At this stage, persons respond to rules, and are concerned with: (a) how authority will react; (b) whether they will be punished or rewarded; (c) whether they will be labeled "good" or "bad". The physical consequences determine whether an action is good or bad. Decisions are based on a blind obedience to an external power in an attempt to avoid punishment or seek reward. Morality exists in actions rather than in persons and standards. The ultimate "wrong" is getting into trouble.

STAGE 2 -- "Self-Benefit" orientation. At stage two, persons realize that each individual has an idea of what is "right" or "best". They are concerned with: (a) the needs and motives of others; (b) the idea that one good turn (or bad) deserves another. Fairness and sharing are interpreted in a practical manner. Self-interest is the compelling motive. Human relationships are built on the premise of exchanging favors or revenge. What is right is serving one's needs, or the needs of others for a "fair" return. What is "fair" is doing something for others if they reciprocate. Such naive "back-scratching" equality is based on exchange and reciprocity.

STAGE 3 -- "Acceptance by Others" orientation. People see what is "right" from another's point of view as well as from their own. They are concerned with what others think. They strive for behavior which pleases others. At this stage, people are influenced by: (a) the feelings of others; (b) what others expect and approve; (c) beliefs about what a righteous person would do. This is the morality of maintaining good relations and of conforming to the general will. People adopt the stereotyped images of acceptable majority behavior. For the first time, behavior is judged by intention, and we hear the familiar, "He meant well".

STAGE 4 -- "Maintain the Social Order" orientation. People consider "right" from the perspective of what is best for society. They examine the consequences of their actions for the group and society. They value: (a) "Doing their duty"; (b) respect for authority; (c) preserving the social order for its own sake; (d) rules as determiners of "right" behavior; (e) fulfilling the requirements of authority and society. Individuals obey rules for their intrinsic value. Moral decisions are based on fixed rules which are "necessary" to perpetuate the order of society. Laws and rules are right because they exist: they are obeyed without question. Stage 4 marks the beginning of a sense of sacredness of human life as part of the social, moral or religious order.

STAGE 5 -- "Contract Fulfillment" orientation. The individual respects impartial laws and agrees to abide by them. The society agrees to respect the rights of the individual. The U.S. Constitution and the Declaration of Independence are based on these principles. Aside from what has been democratically accepted, morality is a matter of personal choice. Moral issues are solved by the passage of laws based on general principles, e.g., 'the greatest good for the greatest number'. People at Stage Five believe laws should be changed when they infringe on human convictions. Persons at this stage choose to change laws rather than break them when such change is possible. Where it is not possible, they may choose to disobey what they consider to be an unjust law and willingly suffer the consequences. This differs from the rigidity of STAGE FOUR'S "law and order" orientation.

Stage Five people define rights in terms of individual standards as sanctioned and codified by society. Outside of the legal area, personal agreement is the binding element of obligation.

STAGE 6 -- "Ethical Principle" orientation. Conscience is the directing agent at this stage. Respect for each person's individuality is paramont. The values are believed to be valid for all humanity. The individual complies with rules to avoid self-condemnation. Thus, at STAGE SIX, morality is a decision of conscience based on universal ethical principles. The action must be good in itself and consistent with these principles. The individual makes his or her decisions on the basis of these principles.

MORAL DEVELOPMENT APPROACH reprinted from: Mattox, Beverly A. Getting It Together -- Dilemmas for the Classroom Based on Kohlberg's Approach. San Diego: Pennant Press, 1975.

RESOURCE PERSON APPROACH

Here is a checklist of suggested preliminary procedures that should help insure the possibility of having a successful classroom visitation by a resource person dealing with a law-related topic.

The key to success is to share information and ideas with your guest as far in advance as possible. As in most classroom activities, success or failure of a classroom visit by a resource person is usually determined in the planning of the appearance. Many of the ideas presented here can also be adapted to field-trip situations.

INFORM YOUR GUEST ABOUT: Checklist

A. Characteristics of the Class ___
   1. Grade level, size
   2. Socio-economic background
   3. Legal and political sophistication

B. Context of Presentation ___
   1. What are you currently studying?
   2. Where does presentation fit in?
   3. What are your goals for presentation?

C. Objectives of the Presentation ___

D. The Amount of Time Needed and/or Available ___

E. Appropriate Methods of Instruction ___
   1. Lecture
   2. Mini-lecture with discussion (Socratic)
   3. Panel Discussion
   4. Debate
   5. Role-playing
   6. Other inquiry methods

F. The Materials and Equipment ___
   1. Are hand-outs needed? If so, will you duplicate them?
   2. Any A-V equipment necessary?

G. Preparing the Class
   1. Cases should be read and discussed prior to visit
   2. Have students prepare questions in advance
   3. In a role play, discuss procedures with students. Assign and explain roles in advance.

H. Follow-up Activities ___
   1. Ask resource person for suggested follow-up activities
   2. Use de-briefing techniques to solicit feedback from students

I. Have You Shared the Evaluation with the Resource Person? ___

J. Ask Resource Person to Evaluate the Presentation from This Perspective. ___

BRAINSTORMING APPROACH

A. Brainstorming is an intense experience that is strongly focused on a single topic for a limited period of time. It provides a very different and stimulating student interaction of time -- the kind of variety that most groups enjoy immensely. Finally, the unleashed and concentrated mental power generated in a brainstorming session guarantees both individual and group achievement.

It is in the problem-solving area that brainstorming probably succeeds better than any technique yet devised. The strategy was first utilized in industry as a means of overcoming obstacles, solving problems and finding new and creative approaches to unsatisfactory or inefficient procedures or systems.

The concept is very simple. A group of students is given a single problem or obstacle and asked to "storm their brains" for ideas. To increase spontaneity and rapidity of ideas, each participant is encouraged to call out his thought the instant an opening presents itself. Each brainstorming session usually intensifies into an exciting rapid-fire, off-the-top-of-the-head group experience. Stimulation and motivation build as each participant contributes and interest mounts to higher and higher levels.

The ideas generated tend to serve as catalysts for new responses. Creative and effective thoughts begin to evolve from this group process. In contrast, individuals often react in traditional patterns and rarely have an innovative "brainstorm" without the stimulus of multiple sounding boards.

B. Advantages of Brainstorming: The advantages of brainstorming are many as cited by teachers and students who have used the technique. According to experienced users of the procedures, brainstorming:

(1) Is stimulating and provides a varied instructional approach. It generates enthusiasm and eagerness to join in by its open invitation to participate and its rapid, free-wheeling approach.

(2) It is highly motivating. Students who usually allow their verbal, articulate classmates to dominate question-and-answer periods get the urge to participate. They are not "put down" or degraded for "wrong answers" and feel a real sense of contribution as their suggestions are noted on the project sheets. On the other hand, those who dominate traditional classroom situations are also stimulated to get their ideas out and on the record.

(3) Increases "task focus". The brainstorming group is kept on target with very little pressure from the group leader because of the structure and ground rules. Editorializing, personal commentary, rejoinders, eloquent speeches, and the other destructive activities of committeedom are eliminated in this process.

(4) Promotes spontaneity and creativity. The members of the group begin to link ideas and "bounce suggestions off the group" in a sounding-board procedure that gathers momentum as the session continues. Mental power is fully unleashed in this positive atmosphere.

(5) Is efficient and productive. Scores of ideas and suggestions or problems and obstacles can be listed in a few minutes. Parallel suggestions and obstacles lead the group toward sound "next steps".

(6) Involves participants in the ownership of ideas. The participants feel greater kinship for their product as they assume group ownership of their ideas and suggestions. Problem solving is made much easier when communal commitment is guaranteed.

(7) Provides a permanent record and aids in developing solutions to problems. The results of the sessions can easily be reproduced or reused to design alternate procedures and programs for solving problems or meeting objectives. The production of the group takes on value as a permanent evaluation record and as testimony to individual and group effort.

C. How to Proceed

(1) Divide the class into small groups (4-6). Arrange them in separate sections of the classroom making sure that someone in the group has paper and pencil to write down the ideas suggested in the brainstorming session (a recorder).

(2) Explain briefly to the class the guidelines for brainstorming: [a] express no negative evaluation of any idea presented; [b] work for quantity, not quality -- the longer the list of ideas, the better; [c] expand on each others ideas, piggyback, hitch on, elaborate whenever possible; [d] encourage zany, far-out ideas; [e] record each idea, at least by a key word or phrase; [f] set a time limit and hold strictly to it.

(3) Ask each group to evaluate their results as a group, and then, if necessary, come up with the best 3, 5, or 10 answers. Set a time limit.

(4) Share the results of each group with the class.

(5) You may wish to evaluate the process of brainstorming in terms of efficiency, strengths, weaknesses and how to improve its use as a class.

Source of BRAINSTORMING APPROACH: Dunn, Rita, S., and Kenneth, J., Practical Approaches to Individualizing Instruction: Contracts and Other Effective Teaching Strategies. West Nyack, N.Y.: Parker Publishing Company, Inc., 1972.

TITLE: Classroom Strategies: The Case for the Case Study Approach
CATEGORY: Introduction to Law and the Legal System
DESCRIPTION: This article supports the case study approach to teaching law-related education
AUTHOR/EDITOR: Isidore Starr
PUBLISHER/SCHOOL DISTRICT: American Bar Association, Update, Fall, 1977, p.11-15.

TO TEACHER:

In addition to providing general background information, the article explores a variety of classroom strategies related to the case-study method.

Instructions:

Read and Enjoy!

The Case for the Case Study Approach

Isidore Starr

Things haven't changed much since Alexis de Tocqueville wrote, "Scarcely any political question arises in the United States which is not resolved, sooner or later, into a judicial question."

Even as early as the mid 1800's, de Toqueville was able to observe one of the most salient characteristics of the American people, our habit of "constitutionalizing" our conflicts, of resolving them through judicial interpretation of the Constitution. With the passage of time, de Toqueville's observation has become truer than ever. Every great issue of our time, from A (abortion) to Z (zoning), comes before our courts, and landmark cases often offer an illuminating picture of the clash of values and the resolution of difficult issues.

Important case decisions are readily accessible (see box on pp. 14-15) and can easily be adapted to excellent classroom exercises, since the opinions contain everything you need to present an issue fully. Case studies also offer an introduction to ways of thinking. To observe well-trained minds grappling with some of the perplexing issues of the day can be an object lesson in decision-making and conflict resolution.

Below is a case that may well be of special interest to teachers and students, *Tinker v. Des Moines Independent Community School District*, 399 U.S. 503 (1969). In recent years the Supreme Court has entered the schoolhouse to decide matters of concern to school officials and to students and their parents. Among these confrontations are the issues of corporal punishment, the subject of the major article in this issue, suspension and expulsion of students, and freedom of expression. *Tinker* is the most important ruling of the Court in this latter area.

The Facts

A good way to begin is by presenting students the facts of the case. The facts are sometimes set forth clearly in the text of the Court's ruling and can be reproduced easily. More often, however, the instructor will have to edit the facts to meet the maturity level and the reading skills of the students. The following statement of facts is an edited version and includes the facts as presented in the majority and dissenting opinions.

In December, 1965, a group of adults and students decided to publicize their opposition to the Vietnam conflict by wearing black armbands during the holiday season and by fasting December 16 and New Year's Eve. Several of the students present had engaged in similar activities in the past, and they decided to participate in this activity.

The principals of the Des Moines schools heard about the plan and, on December 14, adopted a policy that forbade the wearing of an armband to school. Students who refused to remove such armbands would be suspended until they complied.

On December 16, several students who knew about the regulation wore armbands to school: Paul Tinker, 8 years old and in the second grade, Hope Tinker, 11 years old and in the fifth grade, Mary Beth Tinker, 13 years old and in junior high school, and Christopher Eckhardt, a 16-year old high school student. The following day, John Tinker, a 15-year old high school student, wore his armband to school.

The students were suspended and were told not to return to school unless they removed their armbands. They stayed away from school until after New Year's Day, when the planned period for wearing the armbands had expired.

Several incidents took place on the day the students wore their bands. There were comments and warnings by other students, some poking fun at them, and an older football player warned other students they had better let the protestors alone. A math teacher had his lesson practically "wrecked" by disputes with Beth Tinker.

The suspended students, through their fathers, filed a complaint with the United States District Court, asking for

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Fortas: "State-operated schools may not be enclaves of totalitarianism."

an injunction ordering the school officials not to punish them. In addition, they sought nominal damages—a small or token sum of money, usually $1.00, to show that legal injury has been suffered.

The Issues

With the facts in the hands of the students, the next step is to ask them to identify the basic issues as perceived by the opposing parties. One way to do this is to organize the students into small groups in which they place themselves in the position of the students or the school administrators.

In this case, the facts suggest a wide variety of issues. Students new to law studies and the case study method will probably perceive these issues in moral or practical terms: is it fair that students be deprived of their opportunity to express their political opinion? Will wearing the armbands disrupt the learning process? What about the responsibility of the school to maintain order?

By examining the Constitution and Bill of Rights to determine which provisions are relevant, however, students can begin to translate these general concerns into legal/constitutional issues. Does the First and Fourteenth Amendment protection of free speech apply to students in the school? If it does, is wearing a black armband considered speech which is protected by these Amendments? Is the free speech protection absolute, or can it be limited in certain circumstances? If so, what are those circumstances, and do they apply here?

The Arguments

Once the issues have been identified, have the students convert these into persuasive arguments for presentation to the Court. This exercise should help students see new dimensions to the issues and gain further insight into how these issues can be framed under our Constitution. The following summary of the actual arguments may provide a model.

In a criminal case, proof is necessary beyond a reasonable doubt, but since this was a civil proceeding, the attorneys for the Tinker children only had to prove by a fair preponderance of the evidence that their side was right.

It was argued, in the first place, that the wearing of armbands was the equivalent of speech and was thus protected by the First and Fourteenth Amendments. The First Amendment prohibits Congress from abridging freedom of speech, and the Supreme Court has expanded this prohibition to states under the Due Process Clause of the Fourteenth Amendment ("No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ") by interpreting 'liberty' to encompass the fundamental rights guaranteed by the First Amendment.

The second line of argument was that the action of the school authorities was capricious, arbitrary, and unreasonable because it simply singled out one form of expression—the black armband—rather than prohibiting the wearing of all controversial insignia. Furthermore, the administrators had permitted the wearing of political campaign buttons, and even the Iron Cross, in the schools.

The action of the school authorities would have been understandable if they could show that trouble might ensue in the school. However, the school system did not have a history of disruptions and, in any event, a few armbands in a school system of 18,000 students, the plaintiffs argued, did not warrant the action of the school administrators.

The attorneys for the School District responded with equally effective arguments. Amendment X of the Constitution vests the states with power over the educational system. Acting in the name of the state and with the powers vested in them, school authorities have the responsibility to take measures to protect the health, welfare, and safety of the students under their supervision.

The school regulation against black armbands was necessary to preserve discipline in the school. The Vietnam War was a divisive conflict marked by public protest meetings, draft card burnings, and a march on Washington. A former student of one of the high schools had been killed in Vietnam and some of his friends might have reacted strongly to the wearers of armbands. Students at one of the schools had been heard to say that if black armbands were permitted, they would wear armbands of another color. The situation seemed rife with rumors of trouble and the school administrators were best qualified to judge the situation. The regulation against the black armbands had been necessary to maintain discipline in the school and to prevent any interference with learning.

The Decision

The United States District Court, the lowest federal court, dismissed the complaint and ruled in favor of the school authorities. The case was carried to the United States Court of Appeals, where the judges were divided equally on the issue. This meant that the lower court decision was affirmed. The plaintiffs then carried their case to the Supreme Court of the United States. The decision was 7 to 2. For whom?

Black: "The beginning of a new revolutionary era of permissiveness"

At this point the students can be told how the case was decided, but this means that they will know the answer without additional thinking. To continue the suspense, present the class with excerpts from the majority and dissenting opinions, without identifying which they are. Students then have the opportunity to choose the line of reasoning which appeals to their minds or feelings. This gives the instructor an opportunity to examine with students cogency of reasoning, tangential commentary, the nature of judicial decision-making, and the personal philosophies and emotional reactions of the judges.

The Opinions

Justice Fortas wrote the opinion for the majority. The following excerpts indicate how he approached the issues.

. . . the wearing of armbands in the circumstances of this case . . . was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment . . . First Amendment rights, in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakeable holding of this Court for almost 50 years.

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.

. . . Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained . . . the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students. . . . Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.

Justices Stewart and White wrote concurring opinions. Justice Stewart did not agree that the First Amendment rights to students are "coextensive" with those of adults, but he nonetheless supported the majority decision. Justice White also supported the majority but pointed out that there is still a distinction "between communicating by words and communicating by acts or conduct." Exposing students to concurring opinions such as these can suggest new perspectives on the majority opinion and open up new topics for discussion.

Justice Black's sweeping dissenting opinion was surprising to those who associated him with some of the landmark freedom of expression rulings of the past. The following excerpts convey the flavor of his thoughts and feeling on the subject of school discipline.

While I have always believed that under the First and Fourteenth Amendment neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases . . . Nor does a person carry with him into the United States Senate or House, or into the Supreme Court, or any other court, a complete constitutional right to go into those places contrary to their rules and speak his mind on any subject he pleases. It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases.

(And) if the time has come when pupils of state-supported schools, kindergartens, grammar schools, or high schools, can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary.

. . . The original idea of schools, which I do not believe is yet abandoned as worthless or out of date, was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders . . . One does not need to be a prophet or the son of a prophet to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders . . .

This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I, for one, am not fully persuaded that school pupils are wise enough, even with this Court's expert help from Washington, to run the 23,300 public school systems in our 50 States. I wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school

officials to surrender control of the American public school system to public school students. I dissent.

Justice Harlan also dissented. His argument was based on the proposition that "school officials should be accorded the widest authority in maintaining discipline and good order in their institutions." Therefore, in cases of this type the burden of proof rests on the complainants to show that the board's action was motivated by other than "legitimate school concerns." There was no proof here that the school officials intended to prohibit the expression of an unpopular point of view, while at the same time permitting the expression of the majority opinion.

Critique

The *Tinker* case is the law of the land, but that does not mean that it is above criticism. The case study method should include an opportunity to criticize the opinions of the Court on the measuring rod of desirable public policy. This stage allows students to take the concerns that they discovered in the issues and arguments phase and apply them to the actual decision.

Students should be encouraged to react freely to the interplay of the Fortas-Black confrontation. For example, Justices Fortas and Black express very different conceptions of education. Which one's views are more desirable for turning out good citizens? Is Fortas's opinion realistic and desirable, or will it place burdens on school administrators? Does Black's opinion reflect what is truly going on in schools? What consequences would it have for teaching and learning?

Application

An essential part of the case study method is speculating on how a constitutional principle would be applied in other cases. Other fact situations permit students to deepen their understanding of the issues and more closely analyze the conflicting values. How would they decide them in the light of the Court's general standard, established in *Tinker*, that school officials can restrict freedom of speech only if they can reasonably predict that the speech will materially and substantially disrupt discipline in the school. Consider the following:

Case I. A student named Guzick came to his high school wearing a button announcing a Vietnam moratorium demonstration and carrying pamphlets urging students to participate in that event. The school has a rule, oral but not written, against the wearing of insignia not related to school activities. This forty-year-old rule had resulted from rivalries of fraternities and sororities. The principal ordered Guzick to remove the button. He refused and was suspended. The school had once been all-white, but it was now 30% white and 70% black. Racial tensions had been evoked in the past by the wearing of such buttons as "White is Right," "Black Power," and "Happy Easter, Dr. King." On a number of occasions, fights had occured. Does the *Tinker* case rule apply here? What are the similarities and differences between the two cases?

Case II. Dallas school authorities knew that some students in the schools would wear black armbands to show their opposition to the war in Vietnam during the Vietnam Moratorium on October 15, 1969. Anticipating disruptions in the schools, the superintendent of schools prohibited the wearing of black armbands on that day. A number of students wearing such armbands were suspended. Those who wore white armbands were not suspended. On previous occasions students had worn peace symbols and had not been punished. Does the Tinker rule apply here? What differences and similarities do you see?

Case III. Charles James, an English teacher in the eleventh grade of an upstate New York high school, wore a black armband to class on November 14, 1969 to show his sympathy with the Vietnam Moratorium. When his principal asked him to remove it, he refused, stating that as a Quaker, he was opposed to killing. James was suspended on the ground that his act was political and his conduct was unethical. James was later reinstated, but after once again wearing the armband, was eventually fired. Upon losing an appeal to the state

Materials on the Bill of Rights

Many excellent materials provide you with information on important cases which have arisen under the Bill of Rights. In addition to those listed below, you will find information on cases in this month's *Curriculum Update* (pp. 23-25), and the boxes on pp. 30-31.

Print

Isidore Starr, *The Supreme Court and Contemporary Issues* (1969). This paperback discusses Supreme Court decisions through excerpts from important cases, providing case backgrounds and decisions, and noting the significance of decisions. The book costs $4.00. Order from Encyclopedia Britannica Educational Corporation, Customer Service, 10th floor, 425 N. Michigan, Chicago, Ill. 60611.

William Cohen, Murray Schwartz, and DeAnne Sobul, *The Bill of Rights, A Source Book* (1976). This paperback source book on constitutional law covers judicial review, freedom of religion, criminal due process, equal protection of the law, the Fourteenth Amendment and federalism. The cost is $4.96, $4.40 for the teacher's handbook; schools get a 25% discount on both books. Address orders to Glencoe Publishing Co., Front and Brown Sts., Riverside, N.J. 08075.

Donald Parker, Robert and Karen O'Neil, and Nicholas Econopouly, *Civil Liberties Today: Case Studies and the Law* (1974). This paperback presents the legal bases for the rights of the accused, equal opportunity under law, property rights, and freedom of religion, speech, press, and assembly. The cost is $4.32, $3.24 for school people. Address orders to Houghton Mifflin Co., Dept. M, One Beacon Street, Boston, Mass. 02107.

Franklyn S. Haiman (ed.), *To Protect These Rights* (1976). This series of books, published in conjunction with the American Civil Liberties Union, includes six books: *Due Process of Law, Freedom of Speech, Racial Equality, Religious Freedom, Rights of Privacy,* and *Woman and the Law.* Each book includes discussions of and excerpts from dozens of cases which show the evolution of constitutionally protected rights. Each book costs $5.75, $4.31 in classroom sets; the complete series is available for $29.50. Address orders to National Textbook Co., 8259 Niles Center Road, Skokie, Ill. 60076.

commissioner of education, he sued to be reinstated in his job, asking for $25,000 in damages. Would the *Tinker* rule apply here?

Here's what each court decided:

Case I. In *Guzick v. Debrus*, 431 F. 2d 594 (1970), the United States Court of Appeals upheld the school authorities. The existence of a long-standing rule against the wearing of non-school related buttons or insignia, the racial composition of the school, the atmosphere of tension, and the racial confrontations of the past justified the actions of the school officials. As for the issue of freedom of expression, the Court said that "America's classrooms will lose their usefulness as places in which to educate our young people if pupils come to school wearing the badges of their respective disagreements and provoke confrontations with their fellows and their teachers." The Supreme Court refused to review this case, letting the decision stand against Guzick.

Case II. In *Butts v. Dallas Independent School District*, 436 F. 2d 728 (1971), the United States Court of Appeals overruled the trial court's decision in favor of the school authorities. The appeals court concluded that the regulation "was improvised . . . for the occasion." Although disruption was a possibility, this did not justify suspending "the exercise of what we are taught by *Tinker* is a consitutional right." In the words of the court, " . . . we believe that the Supreme Court has declared a constitutional right which school authorities must nurture and protect, not extinguish, unless they find the circumstances allow them no practical alternative."

Case III. James lost in the United States District Court, but won in the United States Court of Appeals. *James v. Board of Education*, 461 F. 2d 566 (1972). The District Court decided that James had ignored the New York State Education Department ruling relating to neutrality and objectivity in presenting controversial issues, such as the Vietnam Moratorium. The Appeals Court, however, decided unanimously in favor of James on the basis of the *Tinker* case. They concluded that James had exercised his right to freedom of speech—symbolic speech—in a school atmosphere where there had been no disruptions. The court pointed out that school officials had permitted other signs such as "Peace with Honor," indicating that the school board's regulation against political activity in the classroom may be no more than "the fulcrum to censor only that expression with which it disagrees." The Supreme Court refused to review, thus upholding the decision in favor of James.

Alternative Approaches

There are, of course, other approaches to the case study method. An entire case, properly edited for maturity level and reading skills, can be distributed with instructions that the students discover the facts, arguments, issues, and the opinion or opinions of the judges. An alternative method is to assign to small groups the task of dissecting the case.

On a more sophisticated level, where there are majority and dissenting opinions, the students can be presented with two sets of facts drawn from the opinions. Their assignment is to note the differences in tone and detail of the statements. Then, two sets of opinions are handed out, without disclosing which are the majority and dissenting opinions. The assignment at this point is to match the facts with the opinions.

Films and film strips can be easily used in the case study format. Stopping the media at the proper point to examine the facts and the issues sets the stage for evoking the opposing arguments from the students before resuming the film. Even better, students can be asked to role play appropriate parties to the case and even to act as judge and jurors prior to the disclosure of the decision.

Creative intelligence and imagination can do wonders with the case study method. It adds a dimension to learning, provided the instructor does not fall into the routine of presenting "one damned case after another." Rigid routines can be the bane of a student's life in the classroom—and a teacher's, too. □

Milton R. Konvitz (ed.), *Bill of Rights Reader: Leading Constitutional Cases* (5th rev. ed., 1973). This compendium of important Bill of Rights cases is another good teacher resource. It contains explanatory essays and excerpts from trials and decisions. The cost is $19.50; address orders to Cornell University Press, 124 Roberts Place, Ithaca, N.Y. 14850.

Films

Our Living Bill of Rights Series (1967-69). This series of six color, sound 16mm. films, some with teacher's guides, explores basic Bill of Rights concepts by recreating actual cases and incidents and exploring the various issues presented. The films, which often include individuals who were actually involved in the cases, are open-ended and are designed to encourage discussion. They vary in length from 20 to 35 minutes. The first figure following the title indicates their purchase price, the second the short-time rental fee. *Freedom to Speak: People of New York v. Irving Feiner* ($325, $17); *Justice Under Law: The Gideon Case* ($290, $17); *Free Press v. Fair Trial by Jury: The Sheppard Case* ($360,$21); *Equality Under Law: The California Fair Housing Cases* ($255, $14); *Equality Under Law: The Lost Generation of Prince Edward County* ($245, $14); *Liberty Under Law—the Schempp Case: Bible Reading in Public Schools* ($460, $24). The films may be ordered from Encyclopaedia Britannica Films, 425 N. Michigan, Chicago, Ill. 60611.

Bill of Rights in Action (1969-1976). This series of twelve color, sound 16mm. films, each about 20 minutes long, explores key Bill of Rights issues. In each case, the incident is presented and arguments on each side made. The judgment is left to the audience. The first figure following the film's title is its sale price, the second its rental fee. *Capital Punishment* ($315, $25); *De Facto Segregation* ($320, $18); *Equal Opportunity* ($295, $18); *Freedom of the Press* ($310, $18); *Freedom of Religion* ($285, $18); *Freedom of Speech* ($285, $18); *Juvenile Law* ($335, $22); *Privilege Against Self-Incrimination* ($335, $18); *Trial* ($295, $18); *Women's Rights* ($330, $22); *Due Process of Law* ($325, $18). Order from BFA Educational Media, 2211 Michigan Avenue, P.O. Box 1795, Santa Monica, Calif. 90406.

TITLE: Suggestions to Teachers Preparing for a Field Trip to Court
CATEGORY: Introduction to Law and the Legal System
DESCRIPTION: This article contains instructions and information related to field trips to court.
AUTHOR/EDITOR: Judge Dorothy T. Beasley, State Court of Fulton County, Georgia
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TO TEACHER:

The following suggestions will make your field trip more pleasant and effective.

Instructions:

Read and implement!

SUGGESTIONS TO TEACHERS PREPARING FOR A FIELD TRIP TO COURT

by
Judge Dorothy T. Beasley
State Court of Fulton County

1. The Court is a public institution, providing the people with the judicial services assigned to this Third Branch, and except in certain limited circumstances, is open for observation and inspection by the citizenry.

2. While the public is welcome at any time, without any pre-arrangement, a class visit will be more productive if the teacher inquires about the court calendar several weeks in advance of setting a date for the court visit. The Calendar Clerk of any court can advise the teacher what kind of cases are scheduled for that day, whether civil and/or criminal, whether jury and/or bench trials, whether probation revocation proceedings, whether only motions, or whether no court proceedings at all! The Calendar Clerk can also usually recommend an appropriate and interesting proceeding to observe, in connection with the teacher's particular objectives in conducting the field trip. Or the judge can make this recommendation.

3. Advise the judge whose court you will be observing, when you expect to come, so that the judge can in advance prepare to take a short recess and speak to the group of students.

4. The students should be prepared to ask questions and might discuss this in advance in class or at least think about it individually.

5. Probably the most productive observation is that of an entire short trial, either civil or criminal. Observing small bits and pieces seems to leave the students confused and uninformed about how that small segment fits into the entire picture. Unless the class is studying *only* criminal law, or *only* civil law, it does not matter which is observed. The judge can be asked to describe the difference, if the students do not already know it.

6. A brief discussion in class of the procedure of a trial should be had. A brief outline will do, just so the students know what is happening at each stage of the trial or how the segment they are observing fits into the whole picture. Attached is an outline.

7. A brief discussion in class before the visit about the rights of the parties should be had, particularly if a criminal trial is to be observed. The rights they will observe being protected in practice should be related to the United States Constitution for them, so they learn that the Constitution is a *living* document. For example, the right of an indigent criminal defendant to have a lawyer appointed to represent him at the expense of the taxpayers.

8. Before the class enters the courtroom, the teacher should ask the bailiff or deputy sheriff in attendance where the class should sit, so that it can file in quietly and in an orderly fashion. Ask to sit as close to the front as possible, so that everything can be heard clearly by the class. Many judges will allow students to sit in an unoccupied jury box or on the close-up benches normally reserved for prisoners.

9. If the proceedings are not audible, ask the bailiff or deputy sheriff in attendance if he would ask the judge to have everyone speak louder.

10. Instruct the students that there should be no gum-chewing, feet-shuffling, or loud talking in court. Discuss with them the dignity of the proceedings and the respect which must be shown, not for the judge as a person, but for the office and for the institution of a court of law; it is the final determiner of disputes in our society.

11. When you advise the bailiff or deputy sheriff in attendance that the class is ready to come into the courtroom, give him a note with your name, the name and address of the school, your telephone number, and a description of the class (such as, 22 students from 7th grade class in U. S. History).

12. If the class is one studying careers, the judge should be asked to describe the various jobs related to the operation of the courts in our society, such as sheriffs, clerks, probation officers, lawyers, court reporters, law clerks, etc. The court operates as a team, not simply as a judge.

13. Most of all, have a good time and a happy learning experience!

THE PROCEEDING OF A COURT CASE

1. The case is called and the parties announce whether they are ready or not.

2. If a jury requested, the jury is selected by a process of questioning known as voir dire. If a judge is to try the case rather than a jury, this step is omitted.

3. The attorney for the plaintiff in a civil case, or for the State in a criminal case, has the opportunity to make an opening statement, briefly outlining what he expects the evidence to show.

4. Then the attorney for the defendant has an opportunity to make a similar opening statement.

5. The evidence is presented, by way of live testimony from witnesses as well as documents and physical evidence. Sometimes charts and diagrams and other demonstrative evidence is also used. Since the plaintiff in a civil suit, and the State in a criminal prosecution, has the burden of proof, that party presents its evidence first. Then defendant presents his evidence. Then the plaintiff or State may present rebuttal evidence.

6. After all of the evidence is presented and both parties "rest", the attorneys for each side present their closing arguments to the jury or judge. This is the opportunity for the attorneys to try to persuade the jury that the side which that attorney represents should prevail in the case. The argument is based on what the evidence showed, in the context of the applicable law.

7. The judge then instructs the jury what the law is, to be applied by them to the facts as they find the facts to be from the evidence in the case. If there is no jury, of course, the judge need not give himself the instruction on the law. Normally, the judge and the lawyers will discuss what law is applicable, before the lawyers present their final argument.

8. The jury, or the judge if there is no jury, then deliberates and reaches a decision ("verdict") as to who wins. If it is a civil case, the decision by the judge or jury must include how much money is to be awarded. If it is a criminal case, the judge always decides what the sentence will be, except that only a jury can impose the death penalty.

9. After the judgment is pronounced, the case is over unless the losing party wishes to appeal to a higher court. This concludes the trial, as an appeal will be considered by another court on another day.

IMPROVING CITIZENSHIP EDUCATION PROJECT
FULTON COUNTY SCHOOL SYSTEM

COURT FIELD EXPERIENCE FACT SHEET SUMMARY

Name of Court:

Judge: **Name of Case:**

Case Brief:

Facts as Presented by the Prosecuting Attorney

UNCONTROVERTED IMPLIED

Facts as Presented by the Defense

UNCONTROVERTED IMPLIED

Point of Law Involved in Case :

Arguments Advanced by Both Sides:

PROSECUTION DEFENSE

Points of Law Applicable to the Case as Presented by Judge in his Charge to the Jury:

Examples of Protection, or Lack of It, of the Rights of the Accused:

Terms and Procedures Used in the Courtroom Which are not Familiar to You:

Decision and Opinion of the Student:

Decision and Opinion of the Jury or Judge:

Debriefing Notes from Class Discussion Following the Trip:

Evaluation of the Trip:

Suggestions for the Next Field Trip to the Courts:

INTRODUCING THE LEGAL SYSTEM & THE LAW

TITLE: The Ring Game
CATEGORY: Introduction to Law and the Legal System
DESCRIPTION: Students investigate the necessity and purpose of rules through a classroom game.
PUBLISHER/SCHOOL DISTRICT: Atlanta Public Schools, John Evans, Chairman, Law Education, Division Instructional Planning & Development, ISC. Reprinted by permission from Middle School Law-Related Program c 1980, p. 3.

TO TEACHER:

This activity should enable students to explain how and why laws are created. It also helps to develop a definition for law as well as some basic ideas related to fairness.

Instructions:

Step 1: The teacher enters the room and announces that the class will begin its study of law by playing a game (which usually elicits some positive feedback from the students).

Step 2: At this point, the teacher gives several rings (or paper-clips, bottle caps, pencils, etc.) to the first student in each row. Once each row has an equal supply of materials, students are told to begin playing.

Step 3: Obviously, students are confused by the lack of directions and shortly several may become quite upset or confused. After a minute or so, the teacher gives in to their demands and "explains" the game, telling the students to pass the clips to the back of the row and then back to the front, one at a time. The first team to finish wins.

Step 4: Start the students and then quickly stop them. Tell them they forgot to pass the clips over their left shoulders only. To this, they complain of never having been told of this rule. Don't respond to their complaints.

Step 5: The rings or clips come back to the front and they start again, this time to be stopped because one of the rows has more (or fewer) boys (or girls). Because of this "reason", that row will have to pass two extra rings back and forth in order to win.

Step 6: Now the game re-starts and is allowed to conclude.

Step 7: When the "winners" are announced, most of the remaining students are likely to be angry about the way the game was run. This anger is the basis for discussion which follows.

The following questions can serve as a beginning: "What made you angry about the way the game was played? Why was it unfair? In the responses, three key elements need emphasis:

(A) A game can't be enjoyed without a clear and consistent set of rules announced to all participants before it begins;

(B) The rules can't be changed in the middle of the game without feelings being hurt; and,

(C) Certain groups of individuals can't be discriminated against arbitrarily.

The class should be asked to try to see the relationship between the rules of "The Ring Game" and society's laws. One way to do this is to ask: "Why would a course in the law start off with a game about rings?"

Before leaving the game completely, try to develop a definition for law based on the class experience in the game. ("The set of rules a group or community uses to regulate the conduct of the people within it.")

TITLE: There Ought to be a Law
CATEGORY: Introducing Law and the Legal System
DESCRIPTION: By preparing proposed laws, students experience the difficulties of meeting standards of fairness, non-conflict with existing laws, etc.
FROM: INDIVIDUAL RIGHTS: Rights of the Accused, Freedom of Expression. A Resource Manual for Teachers, p. 46. Institute of Political and Legal Education, EIC, South, RD4, Box 209, Sewell, N.J., 08080. c December, 1976, 2nd revised edition. Printed with permission.

"There ought to be a law..." How many times has each of us uttered or thought these words? This phrase has almost become an American folk saying like "You can't fight city hall!" It is used most often by angry citizens upset over some situation, condition, or practice which they feel could be remedied if only there were a law on the books to deal with it. Any new law must start as an idea.

1. Write the phrase "There ought to be a law..." on the chalkboard and then ask the students to complete the sentence by volunteering ideas about their own particular concerns. For example, there ought to be a law...

   -- banning beverages sold in non-returnable bottles
   -- requiring a traffic signal at the corner of Main and Church streets
   -- lowering the mandatory school attendance age from 16 to 14
   -- requiring jury trials for juvenile criminal cases
   -- etc., etc.

2. The teacher should then select several of the suggested subjects for new legislation and divide the class into groups assigned to draft the proposed laws. Make sure that the student who proposed a particular law is one of those in the group assigned to write it. Give them 15-30 minutes to do this.

NOTE: Urge the students to be as precise as possible in the language they use in writing the laws. The wording should clearly define the law's rule (purpose, scope, limits) as well as its enforcement apparatus, so that ambiguities and interpretation problems can be minimized. They will probably find it difficult to frame a law that is both general in nature yet not open to a wide variety of interpretations.

3. Conclude the lesson by having each group read its drafted law to the class, and then discuss strengths and weaknesses of the law as written.

   In looking at the proposed law, have the students recognize possible conflicts with existing laws; infringements on the rights of others; legislation already dealing with parts of the proposal. This particular aspect can lead to an interesting discussion as well as some research into the above conflict areas. Many times people are not aware that there are particular laws already on the books and it is just a question of possible lack of enforcement.

TITLE: Clarifying Values on Legal Issues
CATEGORY: Introduction to the Legal System
DESCRIPTION: This activity is designed to expand students' understanding of the wide continuum of positions on any legal issue; each having positive data supporting it and each resulting in different consequences.
AUTHOR/PUBLISHER: Adapted from "Spread of Opinion" Strategy Values Clarification, Sidney B. Simon, Leland W. Howe, and Howard Kirschenbaum. Hart Publishing, Inc., New York, 1972, P. 127. Louis E. Raths is credited as originator.

TO THE TEACHER:

The purpose of this strategy is aimed at helping students see the wide range of possible positions on any law-related issue.

Divide the class into groups of five or six. Let each group choose or assign them a controversial legal issue. Some might be:

Death Penalty
Welfare Fraud
Drug Pushers
Child Abusers
Legalized Gambling
Curfew for Juveniles
Runaways
Gun Control

Have the group identify five or six possible positions on their issue. The authors suggest that "the students might identify an ultra-conservative stand, a conservative stand, a moderate stand, a liberal stand, a radical stand, and a revolutionary stand." The students each take one of these positions and write a paragraph defending it. Members thinking of other positions may write more than one statement each to cover all of these positions.

Once this procedure is completed, members of the group reveal their own position and discuss the issue. The authors write that "If all the groups in the class are working on the same issue, each group's continuum is displayed for all to see and a class discussion may follow."

Other variations include having each group member select the position closest to his/her own and rewrite or add to the paragraph so that it expresses his/her own viewpoint. This could then be dittoed and handed out to the class for further discussion. One more variation is to "have spreads of opinion of all the groups on all the issues posted on the walls; the class can walk around the room viewing each group's work. Then each member of the class may be given a chance to state aloud his own position on any of the issues."

It should be emphasized at all times that none of the positions is "right" or "wrong". Students should then identify positive and negative consequences of each position both to the individuals concerned and to society in general.

TITLE: Misdemeanor Vs. Felony
CATEGORY: Introduction to Law and the Legal System
AUTHOR/EDITOR: M. Scott
PUBLISHER/SCHOOL DISTRICT: DeKalb County Workshop 1978, printed with permission.

TO TEACHER:

The case studies (see P. 34) help students understand the differences between misdemeanors and felonies. Consult with a lawyer or judge concerning sentences, i.e., are there specific stipulations in Georgia law or is it left to the judge's discretion to consider circumstances, personal records, etc.

THE LAW

CASE STUDY I

Using the motor vehicle of another person without his permission is a misdemeanor even if the intention is to return it after its use. Stealing a motor vehicle is a felony punishable by imprisonment for one to five years. The penalty for taking another person's property depends upon the circumstances of the act and upon the article stolen. Stealing watermelons is a misdemeanor, for example, while stealing cattle is a felony. Purse snatching is classified as robbery and may result in a twenty-year prison term. Using slugs in vending machines or coin telephones is also taking something that doesn't belong to you and is punishable as a misdemeanor. It is also a crime to receive property which one knows to have been stolen from someone else.

CASE STUDY II

Disorderly conduct is an offense punishable by imprisonment, fine, or both. Examples of disorderly conduct are: (1) using threatening, abusive, or offensive language in public; (2) congregating with others on a public street and refusing to move when ordered by the police; (3) shouting or making noise outside a building at night.

CASE STUDY III

Burglary is breaking into and entering another person's home or place of business which contains articles of value with the intention of stealing or committing any felony. Some buildings close to the dwelling house are considered as part of the home, and an apartment or a rented room in a boarding house is considered the dwelling house of the person renting it. The punishment for burglary is one to twenty years in prison.

CASE STUDY IV

Some acts of "malicious mischief" are misdemeanors; others are felonies. Examples of misdemeanors are: (1) cruelty to domestic animals; (2) defacing guide-posts or altering markings on them; (3) obstructing a highway; (4) injuring telegraph wires or fixtures. Examples of felonies are: (1) destroying books, papers, etc., with the intent to defraud another [1-4 years]; (2) setting fire to fences, grain, hay, etc. [1-3 years]; (3) poisoning water in any spring, well or fountain [2-20 years].

STUDENT WORKSHEET

CASE STUDY I

TAKING ANOTHER'S PROPERTY -- LARCENY

Bob and Tom were walking down their street one evening when they saw Mr. Smith's new sports car parked in his garage. They knew the Smiths were at the high school P.T.A. meeting.

Bob said, "I've always wanted to drive one of these. The keys are in the car; let's ride around the block."

Tom agreed. They got into the car and drove halfway around the block, and then the car stalled. The boys became frightened, abandoned the car, and returned to their homes. Mr. Smith's neighbor, however, had seen them take the car and had phoned the police. Mr. Smith got his car back undamaged and no one was injured. Nevertheless, Bob and Tom had actually committed the crime of using a motor vehicle without the permission of the owner which is punishable as a misdemeanor.

CASE STUDY II

DISORDERLY CONDUCT

Larry and Joe boarded a crowded bus when returning from school one afternoon. They ran up and down the aisle, snatching papers and magazines out of the hands of the other passengers. They meant it all in fun but actually they were guilty of disorderly conduct.

CASE STUDY III

BREAKING INTO ANOTHER PERSON'S HOME OR BUILDING -- BURGLARY

Jack and Dick had a long-standing feud with Harry. When Harry and his family left town for a vacation, Jack and Dick decided to break into Harry's home and steal his prize stamp collection. About 11:00 o'clock one night, they managed to force the latch on the cellar door and entered the house. Before they reached Harry's room, they heard noises in front of the house which frightened them. In running away, Jack dropped his wallet and so they were identified. Nothing in the house was stolen or damaged and no one was hurt. But actually, Jack and Dick had committed burglary.

CASE STUDY IV

MALICIOUS MISCHIEF

Following a big football victory, a group of boys were celebrating and decided it would be very funny to turn street markers around so as to confuse motorists and pedestrians. A local resident called the police, and the entire group was charged with malicious mischief.

TITLE: Felony and Misdemeanor Case-Types in Georgia
CATEGORY: Teacher Information
DESCRIPTION: Listing of felonies and misdemeanors from the Georgia Code, 1981. Several have been deleted from each category.
SOURCE: Georgia Code, 1981, Appendix A, p. 74-79.

TO THE TEACHER:

This list will be an excellent up-to-date accurate resource for many of the activities in this manual and will give an accurate reference pertaining to Georgia law.

FELONIES

1. Advocating the overthrow of government
2. Aggravated assault
3. Aggravated battery
4. Aiding escape
5. Aircraft hijacking
6. Armed robbery
7. Arson
8. Bad check (drawn on out-of-state bank or $500 or more)
9. Bail jumping on felony
10. Bigamy
11. Bribery
12. Bribery of contestant
13. Burglary
14. Carrying a concealed weapon (second offense) *
15. Carrying a pistol without a license (second offense)*
16. Carrying firearms while on parole or probation of felony
17. Child molestation
18. Commercial gambling*
19. Conspiracy in restraing of free and open competition
20. Conspiracy to commit a crime (which is a felony)*
21. Criminal interference with government property (destroy,damage, deface)*
22. Criminal possession of explosives
23. Criminal possession of an incendiary
24. Cruelty to children
25. Damaging, destroying or secreting property to defraud another
26. Distributing material depicting nudity or sexual conduct
27. Distributing obscene materials (to minors)*
28. Enticing a child for indecent purposes
29. Escape (after conviction or while armed with dangerous weapon)
30. False imprisonment
31. False official certificates or writings
32. False public alarm (concerning explosives)*
33. Fraud in obtaining public assistance (over $500)
34. Forgery (first and second degree)
35. Furnishing alcohol to a minor
36. Habitual violator, driving without license
37. Hindering apprehension or punishment of a criminal

38. Illegal use of credit cards; false statements as to financial condition or identity; credit card theft; forgery of credit card; credit card fraud; criminal possession of credit card forgery; criminal receipt of goods and services fraudently obtained; unauthorized use; publication of information regarding schemes, devices, means or methods for credit card fraud or theft of telecommunication services
39. Impersonating an officer
40. Improperly influencing legislative action
41. Incest
42. Inciting to insurrection
43. Influencing witness
44. Instigating mutiny in penal institutions
45. Interference with custody
46. Involuntary manslaughter
47. Kidnapping
48. Machine guns; illegal sale, etc.
49. Malicious confinement of same person
50. Marrying a bigamist
51. Motor vehicle theft
52. Murder
53. Officer or employee improperly influencing another officer or employee
54. "Peeping Tom"
55. Possession, sale and distribution of eavesdropping devices
56. Possession of dangerous weapons
57. Possession of illegal drugs*
58. Possession of tools for the commission of a crime
59. Rape
60. Robbery
61. Seduction
62. Shoplifting (over $100)
63. Shoplifting (fourth offense)
64. Sodomy
65. Soliciting or accepting a bribe
66. Statutory rape
67. Subornation of perjury or false swearing
68. Terroristic thrests
69. Theft by extortion
70. Theft of property or services *(1)
71. Theft of trade secret *(1)
72. Treason
73. Unlawful eavesdropping and surveillance
74. Vandalism to a place of worship
75. Violation of oath by public officer
76. Voluntary manslaughter
77. Violation of Uniform Narcotic and Drug Act
78. Violation of Georgia Controlled Substance Act (VGCSA) [possession of more than one ounce of marijuana; possession of any other controlled substance; sale of any drug]

MISDEMEANORS

1. Abandonment of containers with snap locks
2. Abusive or obscene language
3. Adultery
4. Advertising commercial gambling
5. Bail jumping on forceable misdemeanor
6. Bail jumping on misdemeanor which is of a high degree of aggravated nature
7. Carrying a concealed weapon (first offense)*
8. Carrying a pistol without a license (first offense)*
9. Causing a convict to work on Sunday*
10. Commercial gambling (prior to July, 1977)
11. Commercial gambling, advertising of
12. Concealing death
13. Conspiracy to commit a crime (which is a misdemeanor)*
14. Criminal defamation
15. Criminal interference with government property (obstruct entrance or exit)*
16. Criminal trespass
17. Cruelty to animals
18. Damaging, injuring, interfering with public, or municipal property
19. Deadly weapons at public gatherings
20. Deceptive business practice
21. Discharge of firearms on or near a public highway or private property
22. Disorderly conduct
23. Distributing obscene materials*
24. Endangering security interests
25. Enforcement of the separation of powers provision of the Constitution
26. Escape (prior to conviction)*
27. False acknowledgment of appearance or oath
28. False fire alarm*
29. False report of a crime
30. Fireworks, manufacture, possession or sale
31. Furnishing weapons to minors
32. Gambling
33. Giving false name
34. Inciting to riot
35. Improper solicitation of money by use of violence
36. Involuntary manslaughter
37. Keeping a gambling house
38. Keeping a place of prostitution
39. Litter on highway or on land or water of another
40. Loitering
41. Misuse of National or State flag
42. Obstructing highways
43. Obstruction of officer
44. Pandering*
45. Participation in indecent exposure in plays, night club acts, etc.
46. Pimping
47. Pointing a gun or pistol at another
48. Possessing non-tax paid whiskey
49. Possession of gambling device or equipment
50. Possession of marijuana (less than one ounce)
51. Prostitution

52. Publication of name or identity of female raped or assaulted
53. Public disturbance
54. Public drunkenness
55. Public indecency
56. Purchase of alcohol for a minor
57. Receiving funds for enforcement of penal laws or regulations
58. Reckless conduct
59. Refusal to disperse
60. Refusal to relinquish telephone party line in case of emergency; false statement as to emergency in order to obtain line
61. Riot
62. Simple assault
63. Simple battery
64. Solicitation of sodomy
65. Theft of property or services* (1)
66. Theft of a trade secret* (1)
67. Unlawful assembly
68. Violating the Sabbath Day
69. Violating the Georgia Controlled Substances Act (VGCSA) [possession of not more than one ounce of marijuana]
70. Wearing masks

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* These offenses may be either a felony or misdemeanor depending on the particular elements of the alleged offense.

(1) The following crimes are felonies if the dollar amount exceeded $200 and the indictment or accusation was July 1, 1978 or later:

Theft by taking
Theft by deception
Theft of lost or mislaid property
Theft by receiving stolen property
Theft of services
Theft by conversion
Theft by bringing stolen property into the state
Theft by receiving property stolen in another state

If the dollar amount is $200 or less and the accusation is July 1, 1978, the crime is a misdemeanor.

On any indictment or accusation before July 1, 1978, the above crimes are felonies if the dollar amount exceeds $100 but misdemeanors if the dollar amount was $100 or less.

TRAFFIC CASES

1. Driving on wrong side of road
2. Driving too slow
3. Driving under the influence of alcohol or drugs (DUI)
4. Driving without inspection sticker
5. Driving without insurance (failure to show proof of no-fault insurance)
6. Driving without tag
7. Eluding an officer (fleeing)

8. Failure to yield right of way
9. Following too closely
10. Hit and run
11. Improper lane change
12. Laying drags
13. Leaving the scene of an accident
14. Overlength
15. Overwidth
16. Pedestrian under the influence (drunk on highway)
17. Racing on highway
18. Reckless driving
19. Running stop sign (light)
20. Soliciting rides (hitchiking)
21. Speeding
22. Unlawful use of driver's license

TITLE: Up Against the Law
CATEGORY: Introduction to the Legal System
DESCRIPTION: See below.

PUBLISHER: Reprinted from Models for Teaching, March, 1974, by permission of the publisher, Croft-NEI Publications, 24 Rope Ferry Road, Waterford, Connecticut, 06386, Copyright, Bureau of Business Practice, Inc.
SUPPLEMENT: Prepared by Wiley Wasden, III, 1981 Summer Intern, Center for Citizenship and Law-Related Education.
Model for Teaching: Laws
Skill: Synthesis

TO THE TEACHER:

This model presents a series of activities through which students can sharpen their understanding of the relationship between a society's mores and its written laws. They will conduct research on specific laws in order to form opinions about the usefulness or need for the laws.

PERFORMANCE OBJECTIVE

The student will do one or both of the following:

(a) Conduct research on a law of his/her choice and write an essay in which she/he gives logical reasons for the abolition of that law;

(b) Conduct research on an area in which she/he feels a law is needed and write an essay in which she/he outlines that law and gives logical reasons for its proposal.

INTRODUCTIONAL PROCEDURE

Preassessment

It's important that students know the meaning of the term law before beginning this unit. In informal discussion, ask them for definitions, turning to a dictionary only as a last resort. They should recognize that laws are formalized and usually enforced by a controlling authority.

Ask them why laws are made, on what they are based. Try to elicit the response that most laws derive from moral values, customs, necessity, etc.

TEACHING STRATEGIES

A. Show your class a handful of newspaper articles. Tell them you've collected a series of news stories that deal with people who have run afoul of the law. Read without comment selected parts of two or three articles about fairly common types of law-breaking, such as breaking and entering, speeding or assault. Now introduce the following:

> "Abigail Alvord, wife of John Alvord of Northampton, being presented by the Grand Jury to the court for wearing silk contrary to law, had her case dismissed when it was shown that the accounts of several witnesses were mistaken. Two others brought into court at the same time were found guilty of wearing silk in a flaunting manner, wearing long hair and other extravaganzas not becoming a wilderness state and the profession of Christianity and religion." (See page 44)

Students will probably express some surprise at the last "crimes". Allow them discussion time to express their shock. To such questions as: "Is that really a law?" or "Can they get away with that?" parry with responses such as, "Why don't you think it could be a law?" or "Don't you think the court was right?" As students probe deeper into this incongruity, they'll recognize that the crimes of wearing silk and having long hair don't fit with their values of what's right and wrong. As their surprise turns to suspicion and disbelief, inform students that the cases you just referred to were, in fact, real cases presented to the presiding court in Northampton, Massachusetts in the latter part of the sixteenth century. Ask students if they can think of other American laws made antiquated by social change, e.g., proscriptions against missing church on Sunday or "being a scolding wife". Help students to see that while many laws, such as those dealing with murder or robbery, have remained with us for long periods, others have come and gone as values and cultural situations have changed over the years.

B. Divide students into five groups. Give each group a set of four laws they are familiar with through their daily lives (e.g., city ordinances, state transportation laws. See p. 44 "Some Georgia Laws" for suggestions). Ask each group to identify the basic value or values of our society which have been formalized through these laws. As each group reports to the class, students should see more clearly how our values are reflected in our laws. (You may wish to conduct the same exercise using three or four school regulations and giving students time to discuss the values that underlie them. For example, a school rule against smoking may be the formalized expression of the school's feeling of responsibility for the health and welfare of students, in loco parentis.)

C. Select three common laws and write on chalkboard or separate poster boards. Choose the laws from different areas of social concern. For example, a law from the economic side of life might read, "The maximum number of cigarette cartons untaxed by this state shall not exceed two." You might include a public safety law such as, "Occupancy of this room by more than 90 people is illegal." and a moral law against pornography. Ask the class how these laws are typical of laws that reflect society's values in the particular categories mentioned. Elicit more examples in each category.

Encourage students to extend the number of categories to other areas. Then give the students a week to come up with a list of laws, not through library research but by personal observation. Discuss with them various ways to gather the needed information: signs in public places and on private property, references made in commercials to truth in advertising laws, labels or other tags on merchandise, etc. Students should prepare an index card for each law they locate during the week, and include on the card a brief synopsis of the law as the student perceives it, a reference to where it was found, the function of the law, and an underlying value that may have prompted it.

As each student finds a new category of law during his/her research, instruct him/her to write it in a space you have provided on the chalkboard. By the end of the week, such categories as education, politics, property rights, personal liberty, and ecology may be added to the list. In a series of class discussions, your students can use the information they have collected to exchange information about previously unknown or unnoticed laws.

The relationship between law and justice should be discussed. Particular students who have been in trouble with the law, and inner-city students almost as a whole, will have strong feelings about laws they feel to be unjust and about discrimination on the basis of their age. Students from minority groups will have much to say about "Jim Crow" laws and de facto discrimination which exists often despite repeal of such laws.

D. The question of compliance may come up in discussion. Should one obey an unjust law? Two opposing views are represented in the following books, which are suitable for fairly good readers and might be discussed in groups and then in classwide debate: Henry David Thoreau's Civil Disobedience (available along with Walden in several paperback editions), which argues for ethical noncompliance; and Abe Fortas' Concerning Dissent and Civil Disobedience (Signet paperback), which argues for obeying the law while working to change unjust laws. (See supplement to "Up Against the Law" P. 46 for brief statements of Thoreau's and Fortas' positions.

Survival tactics should be part of any discussion of the law with high school students. How can a teenager avoid getting into trouble with the law? What are his/her rights? How should he/she handle himself/herself in confrontations with the law? At this point, a resource speaker from some area related to Juvenile Justice Services could discuss these and other related questions.

POST-ASSESSMENT

As a follow-up to these discussions, remind your students that it won't be long before they, as voting citizens and community leaders, will have the opportunity to effect the laws under which they'll live. Ask each student either to choose a presently existing law he/she would like to see abolished, or to propose a new law he/she feels is needed. Each student should then conduct research either on the law for which abolishment is suggested, or on the area that the proposed law would be concerned with. Once research is completed, each student should write an essay in two parts. The first part should describe the law he/she wants abolished or added (and how it should be administered and enforced). The second part should present logical reasons for wanting the stated change, and include reference to the social or moral values the change would help enforce.

Criteria such as: evidence of research and analysis of the topic; evidence of an understanding of the relationship between social values and society's laws; evidence of creative effort in the presentation of views; evidence of logical presentation of ideas backed by references should be discussed with students and then become the basic standards for evaluation.

SOME GEORGIA LAWS

(TO BE USED WITH "UP AGAINST THE LAW" ACTIVITY)

TYPE OF CASE

JUVENILE

One must be 18 to be a barber
One must be 18 to play money for bingo or prizes
One must be 3 years old to be on a canoe or a pedal boat on a State lake
One must be 12 to visit the pediatric section of the hospital

CRIMINAL-FELONY

It is against the law to:

Advocate the overthrow of the government
Commit bigamy
Swear falsly
Furnish alcohol to a minor
Instigate mutiny in a prison
Be a "Peeping Tom"
Steal a trade secret

CRIMINAL-MISDEMEANOR

It is against the law to:

Commit adultery
Conceal death
Cause a convict to work on Sunday
Be cruel to animals
Solicit money through the use of violence
Litter a highway or the land or water of another
Misuse the national or state flag
Wear a mask

TRAFFIC

It is against the law to:

Drive too slow
Lay a drag
Hitch-hike
Drive on the wrong side of the road

FAMILY

A divorce may be granted in the case where the female is pregnant at the time of the marriage unknown to the husband.

One must be 18 to marry without parents' permission (unless) pregnant.

A divorce may be granted where one party of a marriage is mentally ill.

TYPE OF CASE
FAMILY CONTINUED

A man who marries the mother of an illegitimate child becomes the stepfather of that child.

A divorce may be granted after a desertion of one party for at least one year.

Funeral expenses of the wife are a primary liability of the husband.

On the death of a person who holds custody of a child after the divorce, the right of custody automatically goes to the surviving parent.

The mere maintenance of friendly relations with the wife of another and enjoyment of her society are not in violation of the legal rights of the husband.

ANTIQUATED LAWS FROM 1816 PENAL CODES OF GEORGIA:

The burning or setting fire to, or attempting to set fire to, a house in a city, town or village is punishable by death.

The denying of God, or a future state of awards and punishments, shall be punished upon conviction with being incapacitated to give testimony in a court of justice or of serving in any office of honor, profit or trust in the state.

An idiot shall not be found guilty or punished for any crime or misdemeanor with which he may be charged.

Killing a slave in the act of revolt is justifiable homicide.

SUPPLEMENT TO "UP AGAINST THE LAW"

DEFINITION: (A) CIVIL DISOBEDIENCE -- The process of committing an illegal act (which violates Law 1) as a duty to try and get Law 2 (thought of as immoral) changed.
(B) THE DISOBEDIENCE of laws which are themselves unjust.

POSITIONS: Henry David Thoreau -- believed in ethical non-compliance of the law. Thus, if one feels that a law is unjust, he/she may dissent from the majority view and practice civil disobedience.

Abe Fortas -- believed that no one should disobey Law 1 to get at Law 2. He advocates the position of obeying all laws while working in other ways to change unjust laws.

QUESTIONS AND IDEAS FOR CLASS DISCUSSION:

(1) If a law is morally objectionable is that enough to justify breaking it?

(2) What about punishment? If a person adheres to civil disobedience to do what he believes is morally right, should he be punished for it?

(3) If one upholds to the civil disobedience doctrine that being right is more important than being in the majority, who is to decide this? Who is to say whether something is right if not the majority?

Thoreau -- if one is right, there can be a majority of one.

(4) What justifies the use of civil disobedience?

EXAMPLES:

A. Failure by the government to prevent or provide for redress for wrongs that the government does not cause to people?

B. A judge interpreting a law incorrectly and the government not acting to correct this?

(5) One thing that should be looked at is the cost and convenience of civil disobedience to the state and participants and whether a particular wrong justifies it. This can depend on the time needed to right the problem constitutionally weighed against the harm done while the law goes on uncorrected.

Example: For instance, in which situations might civil disobedience be warranted?

(1) Wrongful death sentence of prisoner
(2) Nuclear disarmament
(3) Slavery
(4) Problems in Northern Ireland
(5) Civil rights movement

(6) Discuss the statement: "Civil disobedience may not be democratic, but it improves democracy and might even help preserve democracy".

Example: Gerrymandering -- the drawing of legislative districts with the intent of disfranchising the majority or securing it an influence disproportionate to its size.

SOURCES

Ethics - Vol. 86, pp. 323-331, July, 1976. Civil Disobedience and Punishment by A.D. Woodey, University of Virginia.

Political Quarterly, Vol. 45, pp. 206-215. Apr/June, 1974. When is Civil Disobedience Justified? By Stanley Anderson

The Rise and Development of the Gerrymander in Politics and People. By: Elmer C. Griffith, 1907 by Arno Press, Inc.

TITLE: Georgia Court System, U.S. Court System
CATEGORY: Introduction to Law and the Legal System
DESCRIPTION: Lesson plans provide activities designed to acquaint students with both the state and federal court systems.
AUTHOR/EDITOR:
PUBLISHER/SCHOOL DISTRICT: Reprinted with permission from the Improving Citizenship Education Secondary Handbook © 1981 by Fulton County School System. These materials prepared pursuant to grant from Title IV-C of the Elementary and Secondary Education Act (Public Law 93-380).

TO TEACHER: This unit gives students an in-depth exploration into the court system and includes general information, activities, and tests.

Instructions:

Implement the unit on its own or as an accompaniment to a larger study of the court system.

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LESSON TOPIC: Georgia Court System, U.S. Court System

GRADE LEVEL: Secondary

CONCEPTS: Courts, jurisdiction

TERMS: Original, appellate, Georgia Supreme Court, Georgia Court of Appeals, Superior Court, State Court, Juvenile Court, Probate Court, Justice of the Peace Court, Municipal Court, U.S. Supreme Court, U.S. Court of Appeals, District Court

OBJECTIVES: Students will be able to:

1. List state and federal courts using a telephone directory.
2. Collect information on the jurisdiction of state and federal courts using a telephone directory.
3. Discuss the courts and their jurisdiction in the state and federal court system.
4. Decide to which court a person would go given a specific situation.
5. Explain the differences between original and appellate jurisdiction.
6. Match statements about the federal courts with the appropriate court being described.

MATERIALS: *Supreme Court of Georgia*—a booklet prepared in 1978 by Joline B. Williams, clerk; this free booklet can be obtained by calling the clerk's office, 404/656-3470.
Handouts: "Courts and their Jurisdiction," "Fact Sheet—Georgia Court System," "Fact Sheet—U.S. Court System," "Situation—Which Court?," "Article III," "Federal Courts," "Where Should the Case Be Heard?".
Transparencies: "The Georgia Court System," and "The U.S. Court System."

PROCEDURE

1. As a preparation for and introduction to this lesson, have students do the following homework assignment—Using your telephone book, list on Handout "Courts and Their Jurisdiction" all of the courts available to a Fulton County resident in the Georgia Court System and in the U.S. Court System. Based only on the information found in the telephone directory also have students include what they think is the jurisdiction of each court (the kinds of cases the court has the power to deal with). Handouts "Fact Sheet—Georgia Court System," and "Fact Sheet—U.S. Court System" provide fact sheets on this information. Although they should not be given to the student at this time, they may be helpful to the teacher now.
2. In class using the completed Handout "Courts and their Jurisdiction" students should be asked for the names of courts found by looking in the telephone book. On the chalkboard, the teacher should write "Georgia Court System" and "U.S. Court System." For each court name the student should indicate which system it should be listed under and what types of cases are dealt with in this court (jurisdiction); this should be written on the chalkboard. When this has been completed, show transparency, "The Georgia Court System." After students have looked at the diagram, noting where each court is located, discuss (starting at the lower levels working up) each court using the information on handout "Courts and their Jurisdiction". The same should be done with transparency "The U.S. Court System." Be sure students understand the difference between original and appellate jurisdiction. Students should understand that most judicial opinions in

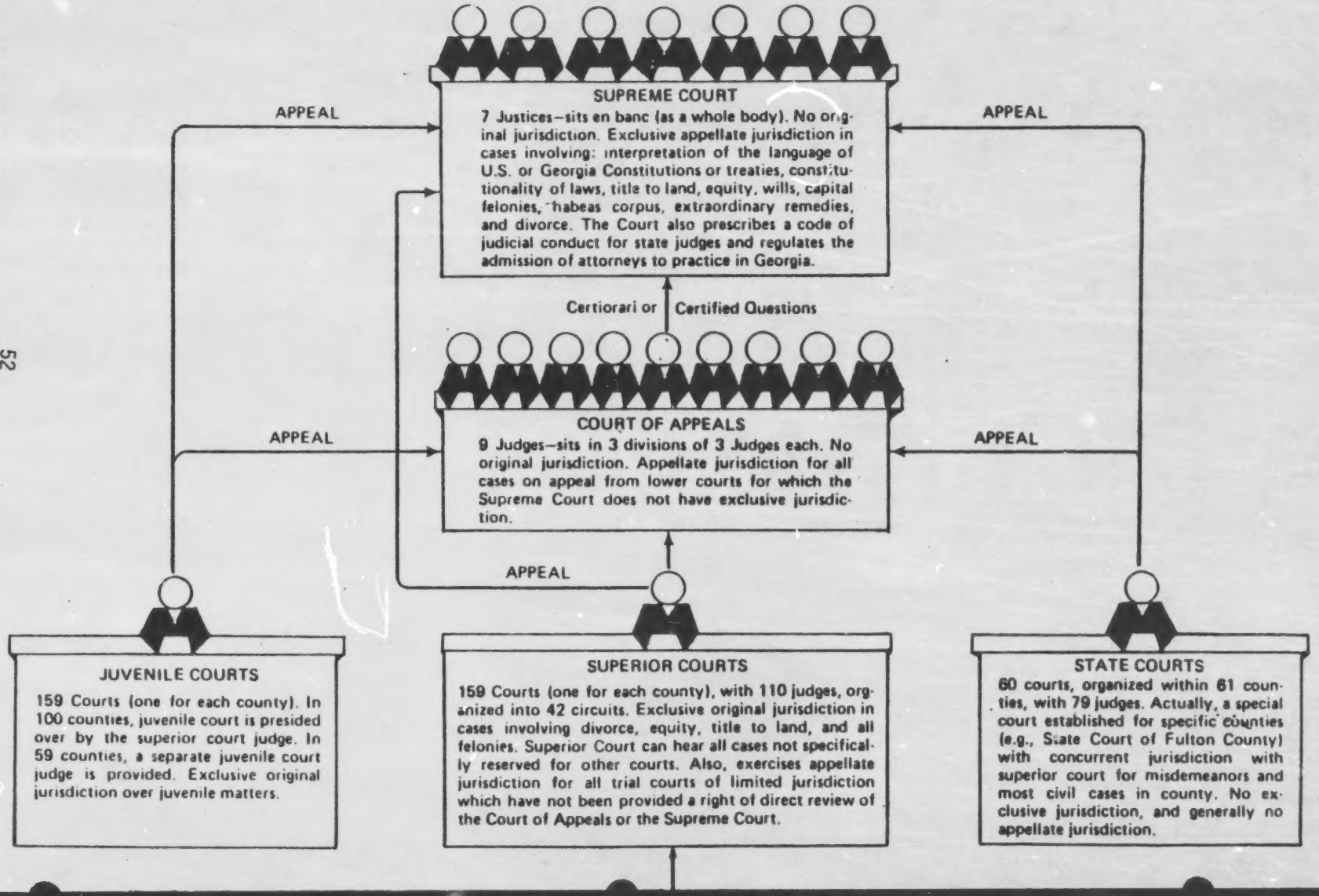
appellate cases are based on prior court decisions. At the conclusion to this part of the lesson, the teacher could distribute Handouts, "Fact Sheet–Georgia Court System," "Fact Sheet–U.S. Court System" to be reviewed for homework that night.

3. The next day, students could play the game "Situation–Which Court?" Have students divide into groups of two or three. Pass out handout "Situation–Which Court?" Be sure it is turned down so students cannot read it. Instruct the students that only one hand out must be turned in per group. For each situation on the sheet, the students should write the name of the court to which the individual would go. No notes can be used. When an appropriate amount of time is up, as designated by the teacher, all sheets must be turned in. After sheets have been collected, go over the situations and have students discuss their answers. While the teacher is determining which group completed the handout most accurately, (this team could win a prize), the students should read Article III of the U.S. Constitution. Have them complete Handout "Article III" while reading this section of the Constitution.
4. Review the answers to handout "Article III". Using transparency "The U.S. Court System" explain the courts in the federal court system. Have students distinguish where there is original and appellate jurisdiction. Handout "Fact Sheet–U.S. Court System", should be helpful to the teacher and students at this time.
5. The next day, students could be given Handout "Federal Courts" which is a worksheet on the federal courts. Have students match the given statements with the proper court. When students have completed this activity review the statements and answers.
6. Handout "Where Should the Case Be Heard?" can be used for review or as an evaluation.

Fact Sheet–Georgia Court System

1. Supreme Court
   a. Court of last resort (highest court in the state)
   b. Has only appellate jurisdiction
   c. Jurisdiction encompasses the review and correction of error of law from specified trial courts in cases that involve the construction of the Georgia or U.S. Constitutions or treaties between the U.S. and foreign governments, questions dealing with the constitutionality of any Georgia or U.S. statute, cases involving title to land, equity cases, validity of or construction of wills, cases of capital felony convictions, habeas corpus cases, cases involving extraordinary remedies, divorce and alimony cases, all cases certified to it by the Court of Appeals for review and decision, and cases the court has the power to require by certiorari to be certified to it from the Court of Appeals for review and determination.
   d. Seven justices who elect one member as chief justice and one as presiding justice (serves as chief justice when the chief justice is absent or disqualified).
2. Court of Appeals
   a. Jurisdiction for the review and correction of errors of law in all cases in which jurisdiction has not been conferred by the Constitution on the Supreme Court.
   b. Has greater work load than Supreme Court
   c. Nine judges who elect one member as chief judge
   d. Usually sit in three divisions of three members each; if there is a disagreement on a decision, then the opinion of the full nine judges is required.
3. Superior Court
   a. Highest ranking courts in the State with original and general jurisdiction
   b. Has exclusive jurisdiction in cases of divorce, felonies, cases respecting title to land, and equity cases, also adoption cases except when such authority is granted to juvenile courts
   c. Has appellate jurisdiction from certain inferior tribunals, (e.g., probate courts and justice of peace courts)
4. State Court
   a. Has county-wide jurisdiction
   b. Jurisdiction over misdemeanor criminal cases and concurrent jurisdiction with superior courts in civil cases of unlimited amounts
   c. Uses a six person jury
   d. Examples of cases–simple assault, traffic offenses in unincorporated part of county, prostitution
5. Juvenile Court
   a. Exclusive original jurisdiction over juvenile matters except where the act alleged is a capital offense
   b. Special handling of delinquent (criminal cases), deprived (being mistreated or deprived by parents), or unruly children (parents cannot control) below the age of 17
   c. Rules are generally more relaxed; the assumption is that juveniles do not have the mature judgment of adults and therefore should be given special consideration

Georgia Court System


SUPREME COURT
7 Justices—sits en banc (as a whole body). No original jurisdiction. Exclusive appellate jurisdiction in cases involving: interpretation of the language of U.S. or Georgia Constitutions or treaties, constitutionality of laws, title to land, equity, wills, capital felonies, habeas corpus, extraordinary remedies, and divorce. The Court also prescribes a code of judicial conduct for state judges and regulates the admission of attorneys to practice in Georgia.
APPEAL
APPEAL
Certiorari or
Certified Questions
COURT OF APPEALS
9 Judges—sits in 3 divisions of 3 Judges each. No original jurisdiction. Appellate jurisdiction for all cases on appeal from lower courts for which the Supreme Court does not have exclusive jurisdiction.
APPEAL
APPEAL
APPEAL
JUVENILE COURTS
159 Courts (one for each county). In 100 counties, juvenile court is presided over by the superior court judge. In 59 counties, a separate juvenile court judge is provided. Exclusive original jurisdiction over juvenile matters.
SUPERIOR COURTS
159 Courts (one for each county), with 110 judges, organized into 42 circuits. Exclusive original jurisdiction in cases involving divorce, equity, title to land, and all felonies. Superior Court can hear all cases not specifically reserved for other courts. Also, exercises appellate jurisdiction for all trial courts of limited jurisdiction which have not been provided a right of direct review of the Court of Appeals or the Supreme Court.
STATE COURTS
60 courts, organized within 61 counties, with 79 judges. Actually, a special court established for specific counties (e.g., State Court of Fulton County) with concurrent jurisdiction with superior court for misdemeanors and most civil cases in county. No exclusive jurisdiction, and generally no appellate jurisdiction.

FactSheet—U.S. Court System

1. Supreme Court of the U.S.
   a. Highest court in the land
   b. Nine justices appointed for life by the President with the advice and consent of the Senate
   c. One of the justices is designated the Chief Justice; when there is a vacancy in this position the President can fill it with either one of the eight associate justices or a person who is not a member of the Court
   d. The court meets on the first Monday of October and continues until June
   e. Corrects errors which have been made in decisions in trial courts
   f. Can bring uniformity when two or more lower courts have reached different results
   g. Usually has appellate jurisdiction; has original jurisdiction in cases affecting diplomatic representatives of other nations, suits between states, and cases involving a state and the federal government.
2. U.S. Courts of Appeals
   a. Twelve intermediate appellate court circuits (including one for the District of Columbia)
   b. The eleventh circuit includes the following states: Alabama, Florida, Georgia, and temporarily the Canal Zone
   c. The eleventh circuit court reviews cases in Atlanta
   d. Judges usually sit in panels of three; only a few times a year for very important issues will the whole court meet to review a case (en banc)
   e. Hears appeals from District Courts in the circuit where parties seek review of legal matters they thought were erroneous
   f. Most judicial opinions are based on prior court decisions
   g. Hears appeals from the U.S. Tax Court as well as government agencies such as the Federal Trade Commission, etc.
3. U.S. District Courts
   a. Federal cases are originally tried and decided here
   b. Each state has at least one court; Georgia has three districts (Atlanta is in the Northern District of Georgia); a district can be divided into divisions with several locations where cases can be heard
   c. Has jurisdiction in disputes involving the Constitution, federal laws, and treaties, controversies where the U.S. is a party, between citizens of different States (in civil cases greater than $10,000), between citizens of the same State claiming lands under grants of different states, between a State or the citizens of a state and foreign states or its citizens, and admiralty and maritime cases.
4. Courts of Claims
   a. Has nationwide jurisdiction
   b. Citizen or corporation may sue the federal government for money damages where the sovereign immunity of the U.S. has been waived by Congress
   c. Claim must be made within six years

5. U.S. Court of Customs and Patent Appeals
   a. Hears appeals from Customs Court, the Tariff Commission, and the Patent Office
   b. Usually meets in Washington, D.C. with all six judges hearing each case
6. U.S. Court of International Trade
   a. Determines controversies concerning the classification and valuation of imported merchandise (customs taxes or tariffs)
   b. Sits at New York City and from time to time at other major port cities
7. U.S. Tax Court
   a. Decides controversies between taxpayers and the Internal Revenue Service involving the underpayment of federal income, gift, and estate taxes
   b. Conducts trials in numerous cities
8. Territorial Courts
   a. In Guam, the Virgin Islands, the Panama Canal Zone, and Puerto Rico these courts serve the same function as U.S. District Courts
   b. In all except Puerto Rico these courts also handle local matters

Article III

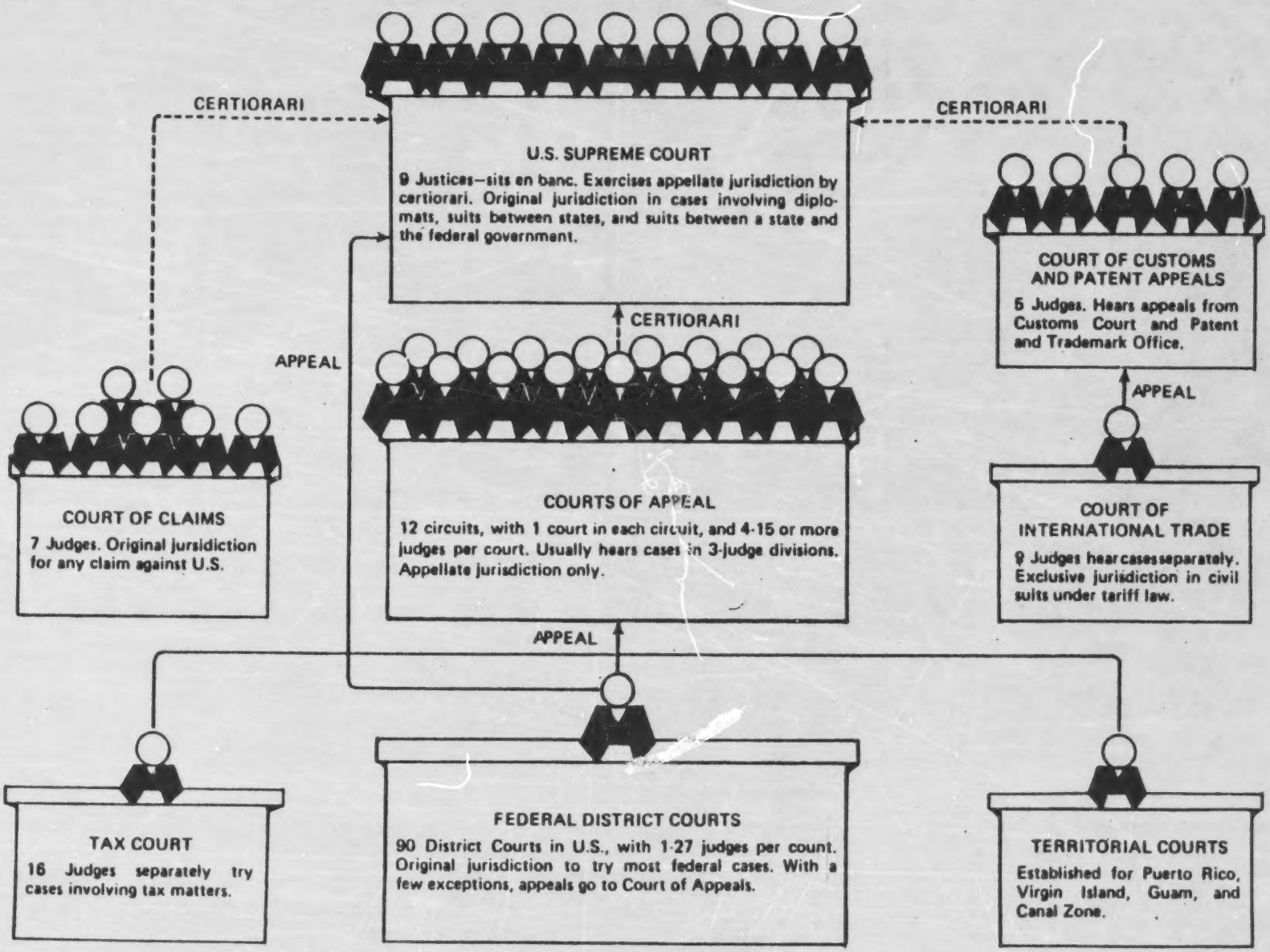
1. Which courts are listed in this Article?

2. How long do judges hold their offices?

3. What types of cases go to the federal court system?

4. Can any cases start at the Supreme Court? Explain.

U.S. Court System


CERTIORARI
U.S. SUPREME COURT
9 Justices—sits en banc. Exercises appellate jurisdiction by certiorari. Original jurisdiction in cases involving diplomats, suits between states, and suits between a state and the federal government.
CERTIORARI
CERTIORARI
COURT OF CUSTOMS AND PATENT APPEALS
5 Judges. Hears appeals from Customs Court and Patent and Trademark Office.
APPEAL
APPEAL
COURTS OF APPEAL
12 circuits, with 1 court in each circuit, and 4-15 or more judges per court. Usually hears cases in 3-judge divisions. Appellate jurisdiction only.
COURT OF CLAIMS
7 Judges. Original jurisdiction for any claim against U.S.
COURT OF INTERNATIONAL TRADE
9 Judges hear cases separately. Exclusive jurisdiction in civil suits under tariff law.
APPEAL
TAX COURT
16 Judges separately try cases involving tax matters.
FEDERAL DISTRICT COURTS
90 District Courts in U.S., with 1-27 judges per count. Original jurisdiction to try most federal cases. With a few exceptions, appeals go to Court of Appeals.
TERRITORIAL COURTS
Established for Puerto Rico, Virgin Island, Guam, and Canal Zone.

55

59

60

COURTS AND THEIR JURISDICTION

Georgia Court System	
Court	Jurisdiction

U.S. Court System	
Court	Jurisdiction

UNITED STATES COURTS OF APPEALS and UNITED STATES DISTRICT COURTS

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Situation–Which Court?

Instructions: For each situation described below, write the name of the appropriate court in the Georgia Court System to which the individual would go. Choices include: Supreme Court, Court of Appeals, Superior Court, State Court, Juvenile Court, Probate Court, Justice of the Peace, Municipal Court.

_____ 1. Sue, age fourteen, is described by her parents as totally unmanageable. She has been habitually disobedient of reasonable and lawful commands of her parents.

_____ 2. Bob was found guilty of murder and given a sentence of death by the trial court. He felt that the judge admitted evidence in the trial that should have been ruled inadmissable.

_____ 3. Sue's father was caught shoplifiting a $150 item.

_____ 4. Phyllis sued Dr. Jones for malpractice.

_____ 5. Jane and Paul went to get a marriage license.

_____ 6. Celina pleaded not guilty of the offense of prostitution.

_____ 7. The middle school filed a complaint for truancy on Linda.

_____ 8. Kelly accused Kim of abandoning her and their five month old baby, leaving them with no financial support.

_____ 9. Brenda is picked up in downtown Atlanta for disorderly conduct.

_____ 10. July and Marvin get married.

_____ 11. Sandra and John went to settle their divorce. Sandra felt that the judge had not ruled fairly.

_____ 12. Julie and Peter wanted to get a divorce.

_____ 13. Adam felt that he was improperly declared a delinquent by the Juvenile Court.

_____ 14. Sylvia sued Mr. Landers for $15,000 for physical problems resulting from their automobile accident.

_____ 15. Joe was found guilty of burglary. The judge owned the store that Joe broke into.

_____ 16. The court ruled that the property at the corner of Elm Street and Market Street belonged to Jim rather than Paul. Paul knew he had legal grounds to appeal the decision.

_____ 17. Mr. Allen died leaving a will.

_____ 18. Sally Sanders wanted to become the guardian for little Katie.

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_____ 19. Jane, fifteen years old, was picked up by the police for shoplifting.

_____ 20. Stand hits Bill with his fist causing him to fall to the floor in great pain.

_____ 21. A group of friends celebrating their college graduation are picked up by the police at 2:00 a.m. for violating the city noise ordinance.

_____ 22. It is 3:30 a.m. and the police need to get a warrant for Paul's arrest.

_____ 23. Jason killed Bob as he had planned to do.

_____ 24. Pam was charged with selling and possession of large quantities of illegal drugs.

_____ 25. Jennifer was picked up by the police in Central City Park for public drunkenness.

_____ 26. Susan, in the eighth grade, breaks into a neighbor's house and steals jewelry.

_____ 27. Barbara was involved in an automobile accident. Her attorney felt that the judge made erroneous legal decisions in her trial.

_____ 28. David's parents were killed in a car accident, and David has no relatives. He is in the third grade.

_____ 29. In an unincorporated part of the county, Gerald commits four traffic offenses while a policeman waits on a side street watching him.

_____ 30. Lance standing in front of the Omni carries around a knife with a four inch blade.

Federal Courts

_____ 1. Trial

_____ 2. Nine justices

_____ 3. Atlanta is in the 11th Circuit

_____ 4. Usually the first court that is asked to correct errors at the trial level

_____ 5. Over 90 courts

_____ 6. Highest court in the land

_____ 7. Deals only with principles of law or constitutional issues of great importance

_____ 8. Where to go if you want to sue someone living in another state

_____ 9. Some of the courts meet regularly in Atlanta

_____ 10. 12 circuits

_____ 11. Judges usually sit in panels of three

_____ 12. Each state has at least one

a. Supreme Court

b. Courts of Appeal

c. District Court

Federal Courts

Answer Sheet

a. Supreme Court

b. Courts of Appeal

c. District Court

__c__ 1. Trial

__a__ 2. Nine justices

__b__ 3. Atlanta is in the 11th Circuit

__b__ 4. Usually the first court that is asked to correct errors at the trial level

__c__ 5. Over 90 courts

__a__ 6. Highest court in the land

__a__ 7. Deals only with principles of law or constitutional issues of great importance

__c__ 8. Where to go if you want to sue someone living in another state

__c__ 9. Some of the courts meet regularly in Atlanta

__b__ 10. 12 circuits

__b__ 11. Judges usually sit in panels of three

__c__ 12. Each state has at least one

Where Should the Case be Heard?

a. State court

b. Federal court

_____ 1. Employee of the State Department seeking back pay

_____ 2. Counterfeit

_____ 3. Food stamp violation

_____ 4. Murder in federal penitentiary

_____ 5. Interstate transportation of stolen cars

_____ 6. Violating Selective Service laws

_____ 7. Committing fraud using the telephones and mail

_____ 8. Person disagrees with the customs inspector's decision on how much to tax one's imported goods

_____ 9. Violations of antitrust laws

_____ 10. Airplane crash

_____ 11. Purchase of faulty product from a national mail order catalog

_____ 12. Petitions from federal prisoners

_____ 13. Condemnation of land for a military base

_____ 14. Not making house payments on a Veterans Administration loan

_____ 15. Skyjacking

_____ 16. Kidnapping someone for 48 hours

_____ 17. Assassination of the President

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Where Should the Case be Heard

Answer Sheet

a. State court
b. Federal court

b 1. Employee of the State Department seeking back pay

b 2. Counterfeit

b 3. Food stamp violation

b 4. Murder in federal penitentiary

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b 14. Not making house payments on a Veterans Administration loan

b 15. Skyjacking

b 16. Kidnapping someone for 48 hours

b 17. Assassination of the President

TITLE: The U.S. Constitution: Article III, Sections 1 and 2
CATEGORY: Introduction to Law and the Legal System
DESCRIPTION: Students read and discuss sections of the Constitution related to the Supreme Court
AUTHOR/EDITOR
PUBLISHER/SCHOOL DISTRICT: Close-Up Foundation, Perspectives '81
Reprinted with permission from Close-Up Foundation, pages 76-80.

TO TEACHER: This exercise is designed to provide students with and understanding of the authority and basis of the Supreme Court.

Instructions:

Step 1: Have students read Article III, Sections 1 and 2 (see handout).

Step 2: Answer and discuss the related questions.

ARTICLE III, SECTIONS 1 AND 2 THE U.S. CONSTITUTION

SECTION 1: The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION 2: The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; -- to all Cases affecting ambassadors, other public Ministers and Consuls; -- to all Cases of admiralty and maritime Jurisdiction; -- to Controversies to which the United States shall be a Party; -- to Controversies between two or more States; -- between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

ARTICLE III - QUESTIONS

1. Which courts are listed in this Article?
2. How long do judges hold their offices?
3. What types of cases go to the federal court system?
4. Can any cases start at the Supreme Court? Explain.

SECTION 1 - QUESTIONS

1. Which courts are listed in this Article?
2. How long do judges hold their offices?

SECTION 2 - QUESTIONS

1. What types of cases go to the federal court system?
4. Can any cases start at the Supreme Court? Explain.

Perspective on the Supreme Court

An Interview With the Late Supreme Court Justice Tom C. Clark

The interview was conducted on August 23, 1976, in Justice Clark's chambers in the Supreme Court, exclusively for **Perspectives.** *On June 13, 1977, Justice Tom C. Clark died after more than 50 years as a lawyer and judge. He served as attorney general from 1945 to 1949 when President Harry Truman appointed him as an associate justice of the Supreme Court. He was a member of the Court until 1967, resigning because of a potential conflict of interest which arose when his son, Ramsey Clark, was named Attorney General.*

Chief Justice Warren Burger eulogized Tom Clark, saying that "no one in the past thirty years has contributed more to the improvement of justice." Even after leaving the Supreme Court, he continued working for a better system of justice. The **Close Up Foundation** *will always be grateful for Justice Clark's valued contributions to the education of the thousands of our students with whom he shared his time and wisdom through innumerable seminars, as well as through this enlightening interview.*

Q—Close Up: Woodrow Wilson once called the Supreme Court "the balance wheel" in our system. Justice (Robert H.) Jackson said that the Court's function was nothing less than being an arbiter between rival forces in the society. After your many years of service on the Court, how do you see its role in our political system?

A—Justice Clark: Well, I think that Chief Justice (Warren) Burger put it pretty well when he said, "If you want to play a baseball game, what do you have? You have an umpire otherwise the game is going to end up in a riot before the nine innings are played." I rather think that the Court is somewhat of an umpire. It considers what the Congress proposes, or what the executive disposes, or what some individual claims, and rules upon them by comparing them with the law as laid down by the Constitution . . . and then calls the strikes and the balls.

The Watergate case was a good example of how it is the Supreme Court's responsibility to decide whether or not the Congress or the president has exercised the authority given them in the constitutional way. I attended a conference in London a few months ago — after a thousand years without a written bill of rights, the English are contemplating drawing one up — and the people there were quite frank about their impressions of Watergate. They seriously questioned what might have occurred to our federal government during Watergate if the judiciary had not been a separate, independent branch.

You also should remember that we on the Court serve another role. If the decisions of the other two branches are in keeping with constitutional doctrine, we use our authority to uphold them. And if a citizen doesn't voluntarily follow the rules laid down by the Congress or by the president or by other courts, why then it's our job to enforce those rules so that he will suffer some punishment or reprimand.

Q—Close Up: Justice William H. Taft once said that courts are composed of people, and one would be foolish to deny that courts are not affected by the time in which the justices live. How much do you think the needs of the times affect the decisions of the Court? How is public opinion brought into the process of taking cases and making decisions?

A—Justice Clark: Well, I served 18 years on the bench and frankly, I myself doubt if any public clamor or any political manipulation on the Court can be effective. I did get quite a few letters from all over the country about various things, but I don't think any of those things influenced my thinking on legal matters which were involved.

Yet, we are influenced by the necessities of the time. Every year there are new cases, new people who come "knockin' on our door" with constitutional questions which need to be resolved. Take for example, the criminal field. We started out with the case of *Griffin v. Illinois** in which Griffin said, "I'm being charged with murder, which is a felony, and I ought to be entitled to read the transcript of what went on in the courtroom. I'm just a layman and couldn't remember everything. Without a transcript, I wouldn't be able to appeal to a higher court." So when this came to us (the Supreme Court) on appeal, we ruled that defendants are entitled to a transcript.

But once they got the transcript they couldn't tell much about it without a lawyer and they commenced again to "knockin' on our door." In an old case before I became a justice, the Court had ruled that only in felony cases should a lawyer be appointed. Exceptions

* **Editor's Note:** In the case of *Griffin v. Illinois* (1956) the Supreme Court ruled that a defendant who is appealing a court decision should not be denied a copy of the transcript of his trial because of inability to pay for it.

were made to this case over the years as additional cases came before the Court, until we had the *Gideon* case.** In this one we ruled that everyone accused of a crime was entitled to a lawyer. What happened was, they kept "knockin' on our door," and finally we extended the ruling to misdemeanors as well.

So you had it going full sway. That's because of the necessities that were brought to our attention. Now you say, well, weren't those brought before? Possibly they were, but not with the impact that they were brought to us.

The same was true in segregation. We had one case which had to do with segregation in the field of graduate education. We ruled that this was unconstitutional and later there came the case of *Brown v. Board of Education**** which was on the grade school level. Then other questions came up. What about public accommodations? What about swimming pools and things like that? And the first thing you know they're "knockin' on the door." I don't know whether you'd say that the individual citizen who felt the pinch knocked on the door, or whether the lawyer looking out saw the pinch and tried to minimize it. I rather think that the pinch was what caused it.

Q—Close Up: Do you think our Founding Fathers had this in mind in making the Constitution vague and almost ambiguous in parts?

A—Justice Clark: Those people who wrote the Constitution did not lack for a choice of words. People like Madison and Jefferson may not have had a thesaurus which we have today, but they didn't need it.

They intentionally used phrases like "due process of law." What is "due process of law?" "Due" to one justice might be an entirely different matter than it may be to me. I think they did it deliberately in order to keep the Constitution from being a straight-jacket or existing in a vacuum. They knew that the country was going to develop and change; they had great hopes for it changing from the standpoint of the advancement of science and literature. They wanted to put the Constitution in vague terms so that a later generation might be able to interpret it, so that the necessities of the times would be met.

I know that some justices think there are some absolutes, but I don't believe there are any absolutes in the Constitution. You have to read a whole amendment, not just read a single clause of it. And when you read a whole amendment, I think it leaves the door

open to interpretation and I believe this was deliberate.

Even though we may call it vague and open to interpretation, it's interesting to look and see how few amendments we have had. Counting the Bill of Rights, which was ten amendments passed in a package, we only have 26 amendments in all. If you compare it to New York State, which has over 300 amendments and wrote its last constitution in 1938, I think it's pretty amazing.

Q—Close Up: That brings us to the question of "judicial review." When the Supreme Court declares an act of Congress or an action by the president unconstitutional, is this not taking on a legislative function?

A—Justice Clark: In a technical sense, I don't think they do. But from a practical view, why certainly they legislate. This is not really done to initiate change. That's the Congress' power and responsibility. It can see that something is wrong in an area and then hold a hearing on it and pass a law. The Court can't do that. The Court has to wait until the question is brought before it in a lawsuit. From the standpoint of initiating change, our function is not legislative at all. From the standpoint of the practicalities of change, one could say there is some judicial legislation.

** **Editor's Note:** In *Gideon v. Wainwright* (1963) the Court ruled that all defendants are entitled to a lawyer appointed by the court if they are unable to pay for one themselves.

*** **Editor's Note:** In *Brown v. Board of Education* (1954) the Court ruled segregation in public schools to be unconstitutional. See the "How a Case Reaches the Supreme Court" diagram for more details on the *Gideon* and *Brown* cases.

Q—Close Up: You served as Attorney General before being appointed to the Supreme Court. I wonder if you would comment on the differences between these two high positions?

A—Justice Clark: It is definitely quite a transition. When I came here I sat next to Bob (Justice Robert H.) Jackson, who was a former attorney general, and I said, "Bob, how long did it take you to get acclimated here?" He said it took close to five years. That may sound like a long time, but when you compare the circumstances and the atmosphere and the climate that are here with that of the Justice Department, they are definitely two different worlds.

When I was attorney general, I would have 50 to 75 phone calls in half a day. I had about 1,000 lawyers working for me and that didn't include the FBI. I had five secretaries in my immediate office and about ten across the hall who wrote letters. Here I spend my days writing opinions, hearing cases and discussing with my fellow justices. I have only a handful of clerks to help me. I'm only 200 yards from the dome of the Capitol, but it might just as well be 200 miles.

"The real strength of the position of the Court is probably in its indispensability to government under a written Constitution. It is difficult to see how the provisions of a 150 year old document can have much vitality if there is not some permanent institution to translate them into current commands and to see to their contemporary application."

Justice Robert H. Jackson (1946)

Q—Close Up: Supreme Court justices are perceived much differently by people than are almost any other public officials. Some of the others are "Hollywoodized," treated like superstars. Justices seem to be held above this sort of treatment. Whether you are a student, tourist or one of the country's foremost lawyers, you are filled with a tremendous feeling of awe and respect for the building, its atmosphere and the men of this court. Could you say something about your own self-concept as a justice?

A—Justice Clark: Now, it's true that judges are human beings. We don't have horns, we really don't. We act just like other people do. But I rather think that it has proven true that most of the 101 justices that have served here have been a little more inconspicuous than they were in other positions. I think it is good that it is that way because the public expects more from a justice. You have to be more careful in what you say and in what you do. Our main function, when a case is presented, is to study it over and decide just what we think that the Constitution requires us to do, regardless of what the clamor might be to the contrary.

Q—Close Up: One thing intrigues us, looking at your long history on the bench. Of all the cases in which you have had a part, are there any that stand out as being most important and most difficult?

A—Justice Clark: I'd say it would have to be the case of *Baker v. Carr.** the one on reapportionment. At the time I did not realize the full impact that it was to have, but looking back, I feel that its effects have been considerable. Every legislature, at least once and some twice and three times, has reapportioned its state since 1963. As a consequence, the case has affected the lives of every person in the U.S. One sure thing is that a politician recognized the power of the vote. If the vote is of equal weight, then every person knows that he has the same voice in the selection of leaders as does the fellow who is walking the other way. We've had a lot of problems with reference to people not taking too much interest in government and public affairs, and reapportionment at least helps to alleviate that by restoring some confidence in just what your vote can mean.

Q—Close Up: Just a final question and an opportunity to summarize. It seems that the experience of the average person with the judicial system might be in a traffic court, maybe family court or small claims court. These are all cases where decisions are fairly easy to comprehend and the effects are very tangible and immediate. Could you offer an explanation which will help the students to understand both how and why the decisions that are made in this building affect their lives?

A—Justice Clark: Well, of course, the reason their lives are affected is that quite a number of our cases affect their rights and duties as citizens. Some of our cases, say business or antitrust matters, wouldn't have a direct effect on all the people, but many of the cases we've had in recent years have had a direct bearing upon everyone. We've been charged with the defense of the Constitution and I say that's the most important document that this country has. You may not always realize it, but that document, the Constitution, plays a major part in your freedom and in your opportunities to do the things that you enjoy doing.

I'd like to say that I hope that young people will

* **Editor's Note:** In *Baker v. Carr* (1962) the Court ruled that federal courts had the power to force changes in the way in which a state legislature apportions electoral districts, if this violated the 14th Amendment's equal protection clause.

take greater interest in the judiciary. We don't have any way to go around blowing our horn and we want people to be better acquainted with the judicial process. This will help us to improve the process and it will help immeasurably when people learn more of how this process works and the necessity for it. I hope that if they find that the courts are slow, or if they feel that the courts should be less ponderous, why, they would speak up. They speak their minds pretty freely and I'm proud that they do. It would be of untold benefit to us to have reactions of that kind. It's not that we would change immediately, because we have to go slowly on these things, but I think in the long run, why, they'd have considerable impact.

Close Up: We really want to thank you so much, Justice Clark, for this opportunity. We know that our students will surely appreciate the uniqueness of this chance to learn from a man with the experience and the wisdom that is yours.

TITLE: Examples and Issues for Discussion and Supreme Court Resources that Relate to Arrest

CATEGORY: Introducing the Legal System and the Law

DESCRIPTION: Ideas for class investigation and discussion related to Constitutional amendments, legal/moral issues, and Supreme Court cases relating to arrests.

SCHOOL SYSTEM: GOVERNMENT, Curriculum Guide - 9th Grade. Muscogee County School District, Columbus, Georgia. Appendices A, B, and C. Printed with permission.

Examples for discussion:

1. Freedom of Religion: Daily devotions are held in the school auditorium by a group of teachers and students. Attendance is voluntary.

2. Freedom of Press: Terrorists kidnap the children of a powerful industrialist. An enormous ransom is demanded to make industry pay for the pollution of the environment. The FBI orders the press to keep it quiet so that more violence will not erupt.

3. Right to Bear Arms: The President has ordered that all handguns must be turned in at the local police station due to the excessive increase in crime involving handguns.

4. Search and Seizure: Your school received a bomb threat. The police search all lockers. An illegal substance was found in three of the lockers. Charges were brought against the people responsible for the lockers.

5. Double Jeopardy: A jury found a murder suspect innocent. When the case was dismissed, the defendant stood up and laughed at the jury saying: "I fooled you!" The judge immediately reversed the decision and sentenced the man to the electric chair.

6. Private Property: The major's son was killed at a hazardous intersection. In the interest of safety the major ordered that the property owners on all four corners must turn over title to 50 feet of their property for the widening of the intersection. No payment was made since it was in the best interest of the majority.

7. Rights of the Accused: A known Mafia leader is due to stand trial for murder. In a previous trial, the witnesses against the defendant had fatal "accidents." In the interest of the safety of the current witnesses the Justice Department ruled that the witnesses would forever remain anonymous.

8. Cruel and Unusual Punishment: A couple convicted of child abuse have their children taken from them and they are ordered never to have another child less they are prepared to spend 10 years in jail.

9. Reserved Rights: A woman was denied a position because she was female. The judge threw the case out of court on the basis that business owners can hire anyone they want.

10. You have fallen way behind in paying off a debt to a local merchant. The merchant brings suit against you and the judge decrees that you must work off that debt by working for the merchant without pay for a year. (Amendment 13)

11. Under the laws of Georgia, you are still classified as a juvenile. You have been arrested and charged with robbery of a grocery store. You insist on the right to a lawyer during the inquiry proceedings. The judge denies your request on the basis that you are still a juvenile. (Amendment 14)

12. You and a companion have been arrested for possession of cocaine. The police question you. After a few minutes, both of you sign confessions. (Amendment 14)

APPENDIX B

How would you suggest that the following issues be solved?

1. An argument occurs between two neighbors as to where a fence dividing their property should be placed.

2. Looting, rioting erupt periodically in the lower-income neighborhoods of the city during the summer.

3. The Board of Education has voted to step-up school integration by expanding the busing of students. Many parents are upset.

4. A nuclear power plant is in the process of being built fifty miles from Columbus along the river. Some groups in the community want the plant - others are bitterly opposed to it.

5. A high school principal allows a group of students to form a committee to recommend how $1,000 in the school-renovation fund will be spent. He assures the committee that its recommendations will be followed. The committee decides to use the money to build a student lounge area to be used by the students during their lunch period. The principal rejects the plan.

6. Bob wants to get a job after school so that he can have more spending money. Neither parent wants him to get a job. His mother wants him to study after school. His father wants him to join the swimming team.

7. You live in an area of the city where garbage collection is infrequent. Flies and rats thrive. Calls to the Sanitation Department have not been heeded.

8. The city council is considering two alternative routes for a highway project. Both routes are ground routes through residential sections. You live in a home that is right in the path of one of the proposed routes.

9. You are a candidate running for the U.S. Senate. Most political observers predict you will win in a close race. Just four days prior to the election, you find out that your staff had stationery printed with your opponent's letterhead and mailed out letters designed to arouse prejudice against him.

10. Your county has a high degree of industrial air pollution. Air pollution seems to increase the occurrence of a higher rate of a wide variety of diseases such as emphysema, bronchitis, and respiratory cancers. The death rate in your county has risen above the national death rate.

APPENDIX C

Supreme Court decisions that relate to arrests:

Miranda v. Arizona (1966)

The U.S. Supreme Court set down the procedure to be used by the police in advising an individual of his constitutional rights prior to questioning.

Chimel v. California (1969)

Supreme Court ruled that an arresting officer must have a search warrant before he can make a search of any premises farther than an arm's reach from the arrested person.

Gustafson v. Florida, U.S. v. Robinson (1973)

Court ruled that (1) police have blanket authority to make a thorough search of any person who has been lawfully arrested, even without a search warrant; (2) any evidence found in such a search can be used to prosecute the arrested person for a crime other than that which caused his arrest.

Harris v. New York (1971)

The Miranda decision forbade the use as evidence of statements made by defendants not advised of their constitutional rights, but in the Harris decision, such statements may be used to impeach a defendant's testimony if he takes the stand in his own defense.

U.S. v. Watson (1976)

Court upheld the right of police officer to arrest without a warrant (in a public place) for a misdemeanor or felony committed in his presence if there were reasonable grounds for making the arrest.

U.S. v. Santana (1976)

The Court ruled that when a suspect is first seen in a public place and then retreats into his or her home to avoid arrest, the police do not need a warrant to enter the home in order to make the arrest.

In many cases, the Court has allowed police to make warrantless arrests of cars where police have probable cause to believe that the car contains something they have a right to seize.

TITLE: Simulation: Supreme Court Conference
CATEGORY: Introduction to Law and the Legal System
DESCRIPTION: Students become decision-makers through the role play and study of an actual Supreme Court case.
AUTHOR/EDITOR:
PUBLISHER/SCHOOL DISTRICT: "Simulation: Supreme Court Conference/The Supreme Court and Science, A Decision for a Brave New World?" Volume XIV, #4, p. 12 and p. 23; Bill of Rights in Action, Constitutional Rights Foundation, Todd Clark, Editor, Los Angeles, November-December, 1980. Used with Permission.
TO THE TEACHER:

Before beginning the activity, read or discuss with students the factors involved in Supreme Court hearings:

WHEN the Supreme Court agrees to hear a case and make a decision, several factors enter into the decision-making process. First of all, the Court must work within the existing law. The Court is bound to follow precedent in cases where the legal issues are similar, unless it decides to take the drastic step of overruling it. Because the legal system works best when the law is consistent and predictable, the Court hesitates to overturn prior decisions unless it has to.

Secondly, since the Court decisions guide lower court rulings, they must provide both flexibility and adequate explanation. That is, saying enough to guide lower courts, but not saying so much that the lower courts can't apply the ruling to slightly different situations. Finally, the Supreme Court tries to develop majority opinions based on the strongest consensus possible. This helps to avoid confusion among the lower courts and limits widely different lower court interpretations of what the law is.

In the following activity, "Supreme Court Conference," you decide a case applying these principles and in the same way Justices do when they hold a case conference.

Instructions:

Step 1: Have each student read a copy of the "fact situation".

Step 2: Give students five minutes to write a brief summary of their opinions and the reasons behind them.

Step 3: Divide the class into groups of nine.

Step 4: Each group should pick one Chief Justice and assign the remaining Justices, numbers 1-8.

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Step 5: Starting with Justice Number 8, each person should give their opinions in order. (Hint: each Justice should keep a tally of the Justice's opinions for and against as the questions are given).

Step 6: Break up the group and for 10 minutes hold a free discussion of the case among various justices and groups of justices. Justices will want to try to persuade others of their viewpoint and also try to form coalitions in order to form a majority opinion. Discuss your opinion and your reasons for it.

Step 7: Form a group again and take a final vote on the outcome of the case. Debriefing Questions:

A. What basis did you use to formulate your initial opinion?
B. Did you get others to agree with you? If so, what did you bargain with to get them to change their mind?
C. Did you change your opinion? Why or why not?

Step 8: Have students read and discuss "The Supreme Court and Science: A Decision for a Brave New World?" after giving them the <u>facts</u> below.

FACTS: Dr. Ananda Chakrabarty applied for a patent for a new bacterium he had developed. The new micro-organism breaks down petroleum into simpler substances and is useful in cleaning up oil spills. Existing patent laws limit patents to new "manufactures" or "compositions" of matter, and don't permit the patenting of laws of nature, physical laws or abstract ideas. The Patent Office had decided Dr. Chakrabarty's work fell into the latter category. Underlying this issue was a much bigger one. That is, whether the Court would approve, as a police matter, products and life forms that are developed through sophisticated scientific techniques of gene-splicing. Gene-splicing involves the transplant of recombinant DNA from one organism to another. The arguments revolved around the desirability, in social and moral as well as legal terms, of patenting new life forms. Should the Supreme Court sanction the manipulation of life at its most fundamental level?

The Supreme Court and Science

A Decision for a Brave New World?

In a headline-making decision, the Supreme Court has ruled that man-made micro-organisms can be patented (*Diamond v. Chakrabarty*, 100 S.Ct. 2204, 1980). In doing so, the Court resolved a narrow legal question and opened the doors to a scientific and political controversy.

Media across the country announced the decision with both praise and criticism. Playing upon the fact that living organisms can now be patented, the news stories focused on the reactions of scientists and political commentators. Few news articles reported that the ruling itself was actually a narrow one (referring only to this specific case) or that the Court's decision rested on the interpretation of the ambiguous language of the patent laws. Instead, the news stories focused on the emotions that were aroused by the decision.

What was before the Court was a request by Dr. Ananda Chakrabarty to get a patent for a new bacterium that he had developed. To decide the issue, the Justices reviewed the patent laws, particularly the limitation that patents can be granted only for new "manufactures" or "compositions of matter."

In a 5-4 decision, the majority of the Court decided that when Congress enacted the patent laws it intended them to include a wide scope of discoveries. This is not to say that Congress intended no limitations, Chief Justice Burger wrote for the majority. The laws of nature, physical phenomena, or abstract ideas such as Newton's law of gravity or the discovery of a new plant in the wild are not patentable. But in this case, the majority ruled, Dr. Chakrabarty had produced a new bacterium with markedly different characteristics from any found in nature. The bacterium in question break down petroleum into simpler substances and are useful in the clean-up of oil spills. The patent laws could be rewritten by Congress, Burger pointed out, but until they are, they encompass Chakrabarty's new bacteria.

In limiting its ruling to the particular language of the patent law, the Court refused to answer the profound moral and social questions that revolve around "genetic engineering." Genetic engineering is the term for the technology of gene-splicing in which building blocks of recombinant DNA from different organisms are snapped together to produce new forms of life. Strictly speaking, Dr. Chakrabarty had not used these controversial techniques, but the Court decision clears the way for granting patents to products that are developed through gene-splicing.

The Court refused to define the impact of gene-splicing technology on society. Chief Justive Burger noted that some of the briefs, or legal research papers, submitted to the Court,

> "present a gruesome parade of horrors. Scientists, among them Nobel lauretes, are quoted suggesting that genetic research may pose a serious threat to the human race . . . We are told that genetic research and related technological developments may spread pollution and disease, that it may result in a loss of genetic diversity, and that its practice may tend to depreciate the value of human life. These arguments are forcefully, even passionately presented; they remind us that, at times, human ingenuity seems unable to control fully the forces it creates—that with Hamlet, it is sometimes better 'to bear those ills we have than fly to others that we know not of.'"

The Court, however, will not be the one to decide the nature of these horrors. Social policy must be made by others. Burger wrote, "What is more important is that we are without competence to entertain these arguments—either to brush them aside as fantasies generated by fear of the unknown, or to act on them. The choice we are urged to make is a matter of high policy for resolution within the legislative process after the kind of investigation, examination and study that legislative bodies can provide and courts cannot.

Whenever the issue does come before Congress, it will no doubt be the subject of heated debate. The potential horrors will be paraded before the people of the country for them and their representatives to view. The task will be to decide to what extent humans should seek to manipulate genetic life at its fundamental level and under what restraints this should be done.

Some will argue that new life forms should be patented in order to provide a commercial incentive to industry and science. These advocates argue that the legal protection offered by a patent is a necessary inducement to scientists and researchers who otherwise may not be willing to continue their work, fearing that someone else may steal their idea. In response to this, however, some people worry that pure scientific research, the basic ongoing activity that led to discoveries like penicillin and polio vaccine, could be rejected in favor of a quick profit. To what extent will big money influence the future of science?

But the ruling may lead to benefits in the medical area where patents are pending on insulin for the treatment of diabetes and the anti-viral drug interferon that is now being tested against cancer. But despite these possibly desirable outgrowths of the ruling, a deeper and more troubling question remains.

As a recent editorial in the Christian Science Monitor pointed out, to justify patenting organisms, those who seek patents must argue that all of life's properties can be reduced to physical and chemical components. Is society ready to accept the notion that life has no sacred or vital properties? Are we ready to say that all the elements of life can be found in the laboratory? How that question is answered and to what extent we are willing to manipulate life forms is a question that must be decided by society as a whole. The Supreme Court Justices have made it clear that they will not do it for us.

TITLE: A Visitor From Outer Space
CATEGORY: Introduction to Law and the Legal System
DESCRIPTION: Students explore the Bill of Rights through a simulation game.
AUTHOR/EDITOR:
PUBLISHER/SCHOOL DISTRICT: Prepared by Donald Vetter, Linda Ford, et.al., for Law-Related Education Program for the Schools of Maryland, Inc., ©1978, "Responsibilities and Rights in Schools", p. CR-11. Used with permission.

TO TEACHER: This activity enables students to develop an awareness and an understanding of the freedoms protected in the Bill of Rights.

Instructions:

Step 1: Distribute the handout "Visitor from Outer Space".

Step 2: Have students complete the handout and then tabulate their responses in one of the following ways:

(A) What are the rights you designated as most important? Why?
(B) What are the rights you were willing to give up? Why?

Step 3: Conduct an in-depth discussion of the reasons for their ranking.

(A) At the end of the discussion, praise pupils who fought to keep their rights and expressed their displeasure at giving them up to aliens or humans.

(B) Highlight the possible effects of "authority" on the willingness of various persons to give up their Constitutional rights.

(C) Make a point of telling students that many Americans have fought and died to maintain these rights.

(D) You may wish to draw an analogy to the Nazi Germany situation and bring in the concept of the underground resistance movement.

A VISITOR FROM OUTER SPACE

It is the year 1993, and you are living a quiet, prosperous life here in Georgia. You are quietly watching television with your family when a special news bulletin comes over the TV station. You immediately see that this is not the normal type of news bulletin because there is what looks like a very strange creature on the screen -- the only thing which is familiar is that he is speaking in English. He tells you that he and his people have gained control over all of the communications networks in the United States and that everyone had better pay attention to what he has to say. You change the channel -- and just as he said -- there he is on every station. He begins to speak very loudly, and you gather your family around because you are beginning to worry about what he is going to do. His speech is as follows:

"My name is STHGIR and I am from the planet NOITUTITSNOC in another galaxy where the inhabitants are far superior to the beings on this planet EARTH. Just as we have gained control over the communications of the United States, we have the ability to take complete control over every one of your lives. We do not want a war between our planet and yours, but we do want to control some things so that we can live in peace and harmony with you. We have looked at some of your laws and the way your government operates and have found it to give too much freedom to the individual. Therefore, we are going to conduct a survey to try and arrive at a decision in which both you and we are happy. As I have said, we do not want to take everything away from you; but, we can't allow you to continue to live as you have in the past. Therefore, I am giving you a list of ten of the rights which you now have according to your Constitution. You are to look over the list and decide which of the ten are most important to you. We will allow you to keep FIVE of the ten rights, the five which get the most votes from all the citizens of the United States. You are to rank the following rights in the order in which you would give them up, with "1" being the one you would give up last and "10" being the one you would give up first. After you have completed your ranking, you will receive further instructions."

___ Right to bear arms
___ Right of freedom of speech
___ Right to legal counsel
___ Right to protection from cruel and unusual punishment
___ Right to freedom of press
___ Right to a jury trial
___ Right to freedom of religion
___ Right to peacefully assemble
___ Right protecting self-incrimination
___ Right to privacy

3.1

TITLE: Law in Select Cultures
CATEGORY: Introduction to Law
DESCRIPTION: Suggestions showing the historical development of law, utilizing and integrating such related subject areas as history, religion, philosophy, psychology, English literature, and drama. Much of the source material suggested is in the form of drama or classical studies.
AUTHOR/EDITOR: Irma N. Matson, Law-Focused Education Institute; DeKalb County, 1978. Printed with permission.

TO THE TEACHER:

The law itself as well as the attitudes toward the law of the culture is a prevailing theme in literature, in history, etc. A variety of sources for investigation are suggested. Following the reports, the students could be involved in a session on moral decision-making, i.e.: What is best in the context? If the context changes, should/do the laws change? The Rights of the Accused could be used here.

The example from the Merchant of Venice can be adapted to other sources.

INSTRUCTIONS

Student Reports: Students will choose a topic on which they will give a ten-minute oral presentation to class. Students should turn in note cards and bibliography on completion of presentation for evaluation.

The Law of Primitive Man
The Code of Hammurabi
Level VII, "The Law" from The Source, by James A. Michener
Old Testament -- Leviticus -- Mosaic Code
Development of Law in the Hellenistic Period
The Trial of Socrates
The Laws of Draco in Athens
Roman Law
The Justinian Code
Canon Law
The Trial of Joan of Arc, by George Bernard Shaw
"Inherit the Wind" - Scopes Trial
"The Crucible" by Arthur Miller -- The Salem Witch trials
"A Man for All Seasons" by Bolt, Trial of Sir Thomas More
Galileo Galilei
Magna Carta
English Common Law
The Role of Medieval Universities in the Development of Law
Parliamentary Government
Mohammed and the Law
Merchant Law
The Nuremberg Trials
The Catonsville Nine (Father Berrigan and Dissenters of the Vietnam War)

Were the following rights as guaranteed in the U.S. Constitution reflected in the assignment reviewed?

RIGHTS OF THE ACCUSED

No arrest without probable cause.
Equal protection of the laws.
Due process upon being arrested:
To be advised of the rights to remain silent, to speak but that anything said may be held against the accused, to have an attorney present before speaking, to make a limited number of telephone calls.
No coerced confessions.
Due process after being arrested and booked:
To reasonable treatment and protection while in custody; to be informed of the charges; to be represented by an attorney, and if indigent (without financial means) to have one appointed by the court or to defend oneself; no excessive bail; to have a preliminary hearing on whether there is enough evidence for a trial; to have a fair hearing and defend oneself; to be informed of the date of the trial.
A speedy and public trial.
A fair and impartial trial:
To be tried by a just and unbiased judge; to appear in person; to have an impartial jury; to require witnesses to appear and testify; to confront adverse witnesses and cross-examine them; to be heard in person if desired and to refrain from being a witness against oneself; no double jeopardy; no cruel and unusual punishment if convicted; to appeal conviction to a higher court to correct errors in the trial.

THE MERCHANT OF VENICE ACTIVITY

Teacher relates the story of Shakespeare's The Merchant of Venice in a conversational tone. Include only main characters; omit subplots. Reproduce the outline for the students to follow as the teacher tells the story.

The Facts of the Case:

1. Antonio, a wealthy Christian in Venice, and a merchant, owns a number of ships which are at sea carrying cargoes from around the world.

2. Bassanio, a young protegee of Antonio's, and last of the red hot spenders wishes to court Portia, a lady of great wealth; but, he has no money to do this in style (servants, costly gifts, correct attire, etc.). He is just about broke.

3. Antonio, while he has no ready cash to lend (his money is tied up in shipping) offers to borrow a tidy sum for Bassanio, who is like a son to him.

4. Antonio and Bassanio go to Shylock, a Jew and moneylender who hates all Christians and especially Antonio, to borrow 3,000 ducats. Antonio signs a bond suggesting in jest that if he does not repay the loan in 3 months, he (Antonio) will forfeit a pound of flesh.

5. Bassanio goes to Belmont, courts Portia, wins her hand, and the wedding date is set.

6. Antonio's ships are reported shipwrecked; he is bankrupt and cannot repay the loan.

7. Shylock vows to have his revenge and insists that the Duke of Venice bring Antonio to court to give sentence.

8. Issues at stake: are the laws of Venice to be trusted? Will they be enforced?

9. Confrontation between Shylock and Antonio in court.
10. The outcome of the trial.

Assign small groups one or two of the following questions; and, after group consensus, have them lead class discussion on their questions.

QUESTIONS FOR GROUP DISCUSSION:

1. Is this a civil case or a criminal case, or both?
2. If you decide it is a criminal case, has it met the procedural requirements for a civil/criminal case? See charts.
3. Was there an accused? A plaintiff? Who was the defendant?
4. How was the trial instigated?
5. Were the rights of any of the parties involved abrogated at any time?
6. Were punitive damages awarded?
7. Could a charge of conspiracy be brought in the same suit?
8. If this case were heard today, which of the amendments were violated?
9. If you were the judge, what judgement/verdict would you have rendered?
10. In terms of Kohlberg's theory of moral decision-making, at what level were the principal characters operating? (See p. for a brief explanation of Kohlberg's levels of moral reasoning.)

FURTHER ACTIVITY: Assume Shylock has appealed the decision to the Supreme Court. Take a position and render an opinion stating reasons for your report.

ACT IV - THE MERCHANT OF VENICE

Portia: Do you confess the bond?
Antonio: I do.
Portia: Then must the Jew be merciful.
Shylock: On what compulsion must I? Tell me that.
Portia: The quality of mercy is not strain'd.
It droppeth as the gentle rain from heaven
Upon the place beneath; it is twice blest;
It blesses him that gives and him that takes; (1)
'Tis mightiest in the mightiest; it becomes
The throned monarch better than his crown;
His sceptre shows the force of temporal power, (2)
The attribute to awe and majesty,
Wherein doth sit the dread and fear of kings;
But mercy is above this sceptered sway;
It is enthroned in the hearts of kings,
It is an attribute to God himself;
And earthly power doth then show likest God's
When mercy seasons justice. Therefore, Jew,
Though justice be thy plea, consider this,
That, in the course of justice, none of us
Should see salvation; we do pray for mercy;
And that same prayer doth teach us all to render
The deeds of mercy. I have spoke thus much
To mitigate the justice of thy plea;
Which if thou follow, this strict court of Venice
Must needs give sentence 'gainst the merchant there.
Shylock: My deeds upon my head! I crave the law,
The penalty and forfeit of my bond.
Portia: Is he not able to discharge the money?
Antonio: Yes, here I tender if from him in the court;
Yea, twice the sum; if that will not suffice,
I will be bound to pay it ten times o'er,
On forfeit of my hands, my head, my heart;
If this will not suffice, it must appear
That malice bears down truth. And I beseech you, (3)
Wrest one the law to your authority;
To do a great right, do a little wrong,
And curb this cruel devil of his will.
Portia: It must not be; there is no power in Venice (4)
Can alter a decree established;
T'will be recorded for a precedent/
And many an error by the same example
Will rush into the state: it cannot be.

1. At what level of moral decision-making does this take place?
2. Could one apply this to argue against capital punishment?
3. To do a great right, do a little wrong? Can you think of any recent events in our society where this remedy has been suggested or applied?
4. Once a decree is established, what machinery can be set in motion to change undesirable laws?

TITLE: When Do You Need A Lawyer?
CATEGORY: Introductory Law
DESCRIPTION: An introductory activity to help students to understand that legal services are essential in many situations other than criminal cases.
AUTHOR/PUBLISHER: Reproduced with permission of the National Street Law Institute, 605 G St., N.W., Washington, D.C. 20001. Street Law a Course in Practical Law, 2nd Edition, (Student text) West Publishing Company, 1980, pages 27-28, and in teacher's manual, page 41.

TO THE TEACHER:

One of the most important things a person needs to know is when to get a lawyer. Many people think of seeing an attorney only after they get into trouble, but perhaps the best time to consult an attorney is before the problem arises.

Preventive advice is one of the most important services a lawyer can provide. You should consider consulting an attorney about a number of common situations, including the following:

* Buying or selling a home or other real estate
* Organizing a business or making a major purchase
* Changing your family status (e.g., by divorce or adoption)
* Making a will or planning an estate
* Signing a large or important contract
* Handling accidents involving personal injury or property damage
* Defending a criminal charge or bringing a civil suit

Of course, there are limits to the services a lawyer can provide. If your problem is one that requires a business or economic decision, a good businessperson may be a better adviser than a lawyer. For many other problems, a teacher, doctor or friend may be a better source of advice.

WHEN IS A LAWYER NEEDED POLL

STEP 1: Compile the results and record them on the chalkboard after having the students fill out the following poll.
STEP 2: Ask students to explain the reasons for their decisions.
STEP 3: For which of these situations was there the greatest degree of disagreement? Why?
STEP 4: Ask students to investigate how one would secure an attorney.
STEP 5: As a follow-up activity, invite an attorney or law student to speak to the class to comment on each of these situations and to explain the role of an attorney.

STUDENT WORKSHEET

WHEN IS A LAWYER NEEDED?

Each of the following involve situations in which an attorney may or may not be needed. Circle the appropriate response to indicate those situations in which you feel an attorney should be consulted.

YES MAYBE NO 1. You run into another car in a parking lot. Your insurance agent indicates the company will pay costs for bodily injuries and property damages.

YES MAYBE NO 2. You borrow your brother's car without his knowledge and he reports it to the police as stolen.

YES MAYBE NO 3. You buy a new stereo for $300. At a party one month later, the receiver and speakers blow out. You return to the store and they tell you they are sorry but their stereos only have a two-week guarantee.

YES MAYBE NO 4. You decide to trade in your old car and buy a new one.

YES MAYBE NO 5. Your friends are caught robbing a local store, and they name you as one who helped plan the robbery.

YES MAYBE NO 6. The principal suspends you from school for two days because of an article you wrote for the student paper criticizing the school dress codes.

YES MAYBE NO 7. You apply for a job and are turned down. You think you are rejected because of your sex.

YES MAYBE NO 8. You do not want your family to inherit the $10,000 you have saved. Told you will die within a year, you want the money to be used for cancer research.

YES MAYBE NO 9. You and your mate find that you can no longer get along and you want a divorce.

YES MAYBE NO 10. You earn $5,000 working in a restaurant during the year. You want to file your federal income tax return.

ANSWER SHEET FOR TEACHER

WHEN DO YOU NEED A LAWYER?

1. So long as your insurance company agrees to handle the cost of all personal injuries and property damage, there is probably no need to retain counsel. If you are sued for more than your insurnance coverage, you may wish to hire your own attorney.

2. This problem can probably be resolved informally. Your brother can explain the situation to the police. However, if the police arrest and book you before the situation is clarified, you may want to retain an attorney for the purpose of seeking an expungement of your arrest record.

3. The law implies a warranty which may run beyond the term of the written guarantee. The buyer in this case can seek assistance from local consumer protection agencies or sue in small claims cour-. An attorney is probably not required to secure redress.

4. Car buyers need good advice, but not necessarily from an attorney. Assistance in reading the contract of sale and the financing agreement may be available at your bank. A good mechanic's advice may also be invaluable.

5. You would definitely want an attorney in this situation since you will probably be charged with a serious crime. Even though you did not take part in the robbery, if the charges are true, you may be liable for criminal conspiracy, or as an accessory.

6. You don't have a constitutional right to an attorney in school suspension cases and you may not believe a two-day suspension is a serious enough matter to warrant an attorney. However, you may still want to hire one or find out if a Legal Aid Society or the American Civil Liberties Union will assist you. You'll also need to find out whether your school system will allow a lawyer to be present at the hearing.

7. Before hiring an attorney, you should contact EEOC or a local human rights commission. They may be able to mediate a resolution of the problem. If they are unsuccessful, an attorney can help you bring suit.

8. You should go to a lawyer specializing in wills. If you do not have a valid will specifying that you want the money to go to cancer research, your estate will be distributed according to your state's intestacy laws which may result in your family's inheriting your savings.

9. If there are contested issues involved, such as child support, custody, alimony, or property division, you should consult an attorney. If there are not, you may wish to handle the divorce yourself. You should ask your family court clerk whether you can file the divorce papers pro se (in your own behalf).

10. You do not need a lawyer for filing your income tax return. If you have questions and want some free assistance, you can contact the Internal Revenue Service. In addition several businesses offer tax preparation assistance for a charge.

CONSTITUTIONAL LAW - BILL OF RIGHTS

TITLE: Opinion Poll -- First Amendment Rights
CATEGORY: Individual Rights -- Constitutional Law
DESCRIPTION: A freedom of expression opinion poll to allow students to examine their values concerning the First Amendment rights of freedom of expression.

PUBLISHER: INDIVIDUAL RIGHTS: Rights of the Accused/Freedom of Expression, A Resource Manual for Teachers, pp. 113-115. Institute for Political and Legal Education, EIC South 4d. 4, Box 209, Sewell, N.J., 08080, © December, 1976, Second Revised Edition, printed with permission.

TO THE TEACHER:

NOTE: This activity is designed to accompany a unit on Individual Rights.

OBJECTIVES:
(1) To introduce students to the topic of freedom of expression by having them indicate how they feel about related issues.
(2) To provide students with a means for comparing their positions on various freedom of expression issues.

INSTRUCTIONS: Students should respond individually to the opinion poll (p. 90) on the Student Handout. Responses may be tallied and discussed by the whole class or by small discussion groups.

Have students keep a copy of the poll so that they can refer to it later to see if their feelings about any of these issues have changed.

After the poll is tallied, questions that should lead students into a study of first amendment rights could be:

Who should control information and censorship?
Who should have free speech, etc., and why?
What could be the consequences of each?
What could be the alternatives of each?

STUDENT HANDOUT *

FREEDOM OF EXPRESSION OPINION POLL

Instructions:

Select the response which most closely indicates the way you feel about each item.

SA = Strongly Agree
AS = Agree Somewhat
DS = Disagree Somewhat
SD = Strongly Disagree

Item:

_____ 1. In a democracy an individual should be able to say anything he wants to.

_____ 2. There is never justification for government censorship in any form.

_____ 3. The people of the United States really believe in freedom of speech.

_____ 4. Atheists should not be allowed to spe .k in a public high school.

_____ 5. Any government censorship should be imposed by the Congress.

_____ 6. The President should be allowed to impose censorship during a time of war.

_____ 7. An individual should be allowed to say anything he wishes during a time of war.

_____ 8. Public libraries should not be allowed to have books that have dirty words or pictures in them.

_____ 9. A Communist should not be allowed to speak in a high school.

_____ 10. The President of the U.S. should not allow newspapers to print stories that he thinks are not in the public interest.

STUDENT HANDOUT

_____ 11. I would rather have my minister, priest, or rabbi rather than my parents determine what I should read.

_____ 12. Each community should have a citizen's review board to determine what books or magazines are to be sold by area dealers.

_____ 13. Only religious groups should determine if books, movies, and magazines are obscene or pornographic.

_____ 14. The Supreme Court of the U.S. should determine what books, magazines, and movies should be banned.

_____ 15. Only the Congress should have the right to determine what book stores should or should not sell.

_____ 16. Each community should determine what books, magazines or movies are to be available to the public.

_____ 17. State legislators should determine if a book, movie, or magazine should be permitted to be distributed in that state.

_____ 18. Books on Communism should be banned.

_____ 19. Anti-war demonstrators should not be allowed to demonstrate against the government.

_____ 20. An individual should not be allowed to give speeches in favor of abortion.

_____ 21. When the U.S. is at war, newspapers should not be allowed to carry stories critical of our conduct of the war.

_____ 22. Democratic government is impossible without an informed people.

_____ 23. The news media are a threat to continued democracy in this country.

_____ 24. The government should exercise some control over the "liberal" television news commentators.

_____ 25. Reporters should not be allowed to criticize religion in this country.

_____ 26. Since the President is elected by all of the people, he alone should determine what is in the best interests of the U.S.

_____ 27. Reporters should not be permitted to criticize decisions made by the President or Congress.

_____ 28. Local television stations should monitor network news programs and censor them if they feel that the facts or opinions should not be broadcast to local viewers.

_____ 29. "R" rated movies shown on television should not be censored.

_____ 30. Student and parent boards of review should determine what books should not be permitted in school libraries.

_____ 31. Teachers should be permitted to seize any book or magazine of a student.

_____ 32. School administrators should determine what books and magazines a teacher is permitted to use in the classroom.

_____ 33. Black militants should not be allowed to speak at public rallies.

_____ 34. The Federal Communications Commission should determine the content of programs on the Public Broadcasting System.

_____ 35. Ku Klux Klan rallies which condemn Blacks, Catholics, and Jews should not be allowed.

_____ 36. Educational television should not be allowed to carry programs that depict values that are different from those of most Americans.

_____ 37. Teachers who express unpopular views in the classroom should be fired.

_____ 38. If the evidence shows clearly that the President is guilty of a criminal act, then the people should not be told of this fact for fear that his authority will be undermined in both this country and abroad.

_____ 39. The government should be allowed to classify anything it wishes as secret in the interests of national security.

_____ 40. Most people don't know what's good for them so that the government must see to it that they don't hear or read anything that's dangerous for them to hear or read.

* From: INDIVIDUAL RIGHTS: Resource manual for Teachers, pp. 114 & 115, Institute for Political and Legal Education, 1976. Printed with Permission.

TITLE: Right to Privacy
CATEGORY: Individual Rights -- Constitutional Law
DESCRIPTION: An activity to lead students in a discussion designed to help students explore the personal implications of the right to privacy and their related responsibilities.
AUTHOR/EDITOR: Developed by Staff of National Street Law Institute. Reprinted by permission.

TO THE TEACHER:

INDIVIDUAL RIGHTS TEACHING STRATEGY: RIGHT TO PRIVACY

METHOD:

1. At the beginning of class, distribute copies of the "Information Sheet" stating that the school office requires the requested information for record keeping purposes.
2. Allow students time to read and complete the handout.
3. If students object to the nature of information requested, ask why and use this as a lead into the nature of the right to privacy.
4. If students do not object to providing the requested information collect the handouts and then throw them into the trash in front of the students. At this point, begin a discussion of the natur of the right to privacy.

INFORMATION SHEET

NAME:_____STUDENT ID #:_____

Home Address:_____

_____

Telephone:_____ Are you employed?_____

How many hours per week?_____ Address:_____

_____

Name of Supervisor or Reference:_____Telephone:_____

Your Age:_____ Date of Birth:_____Place of Birth:_____

Social Security Number:_____

Have you ever been arrested?_____If yes, were you convicted?_____

Charge and dates:_____

Have you ever been stopped by the police?_____ If yes, why?_____

Have you ever been treated for drugs and/or alcohol? Explain:_____

_____

_____

Name of School:_____ Address:_____

_____

Name of Principal:_____

Have you ever been suspended for disciplinary reasons?_____

Explain nature of the offense:_____

Grade point average throughout high school:_____

Are you now or have you ever been a member of a group which advocates the overthrow of the United States Government or its Constitution?_____ If yes, name of organization:_____

TITLE: Search and Seizure
CATEGORY: Individual Rights/Constitution Law
DESCRIPTION: Search and seizure issues are examined using landmark court cases and current situations in the context of due process, substantive and procedural.
PUBLISHER/SCHOOL District: Reprinted with permission from the Improving Citizenship Education Secondary Handbook c 1981 by Fulton County School System. These materials prepared pursuant to grant from Title IV-C of the Elementary and Secondary Education Act (Public Law 93-380) pages 17-20.

TO TEACHER:

CONCEPTS: Search and seizure, due process. TERMS: Evidence, search warrant, probable cause, Fourth Amendment. OBJECTIVES: Students will be able to: (1) List and explain the rights guaranteed by the Fourth Amendment to the U.S. Constitution; (2) Discuss the conflict of rights between the government and the citizen with regard to search and seizure of evidence. MATERIALS: Handout, "Search and Seizure".

PROCEDURES:

(1) Ask students what the phrase "search and seizure" means. Then explain that the phrase refers to any search of a person, object, or place by law enforcement officers for evidence related to a suspected crime and the seizing of that evidence.

(2) Distribute handout, "Search and Seizure" to students and have them read the Fourth Amendment to the U.S. Constitution and discuss its meaning and its guarantees.

(3) From the handout, also have students read the summary of the U.S. Supreme Court case Mapp v. Ohio and discuss the following questions: (A) If you were a member of the Supreme Court, how would you rule if the Mapp case were appealed to your court? Why? (B) Justice Clark, expressing the majority opinion of the Court, said that as a matter of "due process", evidence obtained by a search and seizure in violation of the Fourth Amendment is inadmissible in a state or federal court. What do you think the term "due process" means as it pertains to Mapp's involvement with the justice system? (C) Do you think the Fourth Amendment's limitations on searches should apply to a person's place of business as well as home? To his/her garage; automobile; telephone conversations made from a public telephone? (In 1967 in Katz v. U.S., the Court overturned the conviction of a man who had been bugged by the FBI when he used a telephone booth for illegal betting.)

(4) Our system of law protects the privacy of a citizen's home as well as his/her personal and business papers, from unreasonable intrusions. Police can legally invade this privacy if reasonable grounds exist. To be reasonable, there would have to be a probable cause to believe that a crime has been or is about to be committed, or evidence of a crime is concealed in the place to be searched.

There are two kinds of searches and seizures. One is with a search warrant, and the other is without. Can you think of examples when a search warrant should not be required by police? Ask and discuss with students.

(5) Have students read the hypothetical dilemma, "To Search or Not to Search" on the handout. Discuss with them not only what the principal should do but why he should do it. Should one ever consider breaking the law to make changes? What about Rosa Parks' sitting down in the front of the bus instead of in the rear (as required of all blacks in Alabama in 1955)? How does one go about correcting social injustice without breaking the law?

(6) Discussion of the questions after the case study should guide the students in clarifying their own values concerning appropriate means of approaching the problem of effective social change. As an extension activity, the students may look for a local newspaper article which is relevant to the problem presented in the case study. If the newspaper article is used as an extension activity, the possibility of peaceful protest and negotiation may seem more realistic to those who are inclined toward violent protest. Class consensus is not the necessary outcome. However, it is hoped that the teacher would facilitate class discussion of the consequences of William's and Roger's proposed actions.

(7) As further follow-up, the teacher might want to assign some students to read and report on Dr. Martin Luther King's Letters from a Birmingham Jail.

United States Constitution

Fourth Amendment. *The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizure, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be searched.*

Mapp v. Ohio

367 U.S. 643 (1961)

On May 23, 1957, three police officers in Cleveland, Ohio wanted to question a certain person about a bombing incident. This person was reported to be hiding in Mapp's home. Without a search warrant, the police forced their way into her house. Once inside, they found obscene material during the course of their widespread search of the house. These materials were used to convict Mapp of "having in her possession certain lewd and lascivious books, pictures, and photographs." Under Ohio state law at the time, evidence obtained in an unlawful search and seizure was still admissible in a criminal prosecution. The case was appealed to the United States Supreme Court.

To Search or Not to Search

A community near Atlanta has been so shocked by the increased sale and possession of "pot and pills" by students in the schools that the school board has passed a rule allowing principals to search student cars in the parking lots when necessary. The student body president at the high school thinks this violates Fourth Amendment rights. Do you agree, and why or why not?

The principal at the high school must decide whether or not to begin searching student vehicles. Some students say they will demonstrate against him if he does. If he does not search, then he will have to explain to the superintendent and school board. What should he do and why?

THE DENVER POST Wed., Sept. 3, 1980

EVIDENCE INADMISSIBLE

Court Upholds Strangulation Case Ruling

By FRANK MOYA
Denver Post Legal Affairs Writer

The Colorado Supreme Court Tuesday upheld a lower court order suppressing the confession of an ex-convict in the strangulation of an 11-year-old girl at the Pinehurst Country Club.

In affirming a ruling by former Denver District Judge Joseph Quinn, the high court agreed that Denver police improperly questioned James A. Lowe after Lowe had suggested he wanted to speak to a lawyer. As a consequence, Lowe's confession to the June 26, 1979, strangulation of Michelle Conley couldn't be used as evidence at trial, the high court said in a 6-0 ruling.

Quinn, who since he ruled on the case has been appointed to the high court, didn't participate in the decision.

IN ADDITION to the confession, the high court also upheld Quinn's suppression of evidence that was seized from a locker belonging to Lowe after Lowe voluntarily gave the police permission to search the locker. The high court said that evidence was inadmissible because the permission was obtained while the police were questioning Lowe illegally.

Although the suppression rulings were upheld by the six justices who participated in the decision, Justice Luis Rovira said in a concurring opinion that he did so reluctantly. Rovira urged that the U.S. Congress enact a law giving criminal defendants a right to take action against police officers who violate their rights as an alternative to the "exclusionary rule" — a court-created rule that requires that evidence illegally taken by police from defendants not be used at trial.

MISS CONLEY'S body was discovered in a maintenence room at the country club several hours after she had been reported missing. Lowe, a maintenence man at the club who previously has served a prison sentence for a sex-related offense, was arrested several hours after the body was discovered.

After Lowe was brought to the police station, Denver Homicide Detective John Wycoff took Lowe to a room at the station and asked him: "Do you know why you are here?" Lowe said he did and later gave a complete confession that was tape-recorded.

Wycoff failed to ask Lowe if Lowe wished to waive his rights against self-incrimination and his right to have an attorney present when he asked his initial question. During Lowe's confession, Wycoff failed to stop the interview when Lowe expressed misgivings about the interview while it was in progress.

IN AN OPINION written by Justice George Lohr, the high court said Wycoff's initial question to Lowe was calculated to obtain incriminating information before Lowe had been advised of his rights. The subsequent questioning, during which Lowe confessed and gave permission to have his locker searched, was tainted by the earlier, illegal question and therefore is inadmissible, the court said. In addition, the high court found that at the time Lowe confessed, it wasn't shown that he had knowingly and voluntarily decided to waive his rights.

In other action Tuesday, the high court upheld the constitutionality of the state's habitual traffic offender law, under which a driver whose bad driving record has resulted in a five-year suspension of his license, can be found guilty of a felony if caught driving again during the five-year period.

The court rejected several constitutional challenges to the law that had been raised by attorneys for Dewey Kenneth McKnight, but at the same time sent McKnight's case back to the lower court for another hearing.

The high court said McKnight is entitled to have a jury consider whether or not he was driving because of a personal emergency.

In the absence of an emergency in such cases, a judge is required to sentence the driver to a prison term. However, if an emergency was present, the judge may grant probation.

TITLE: Fair Trial and Free Press
CATEGORY: Individual Rights/Constitutional Law
DESCRIPTION: Critical thinking/decision-making skills are developed utilizing two case studies, Sheppard Vs. Maxwell, 1966 and Gannett Vs. DePasquale, 1979 concerning freedom of the press, due process, and constitutional rights.
PUBLISHER/SCHOOL DISTRICT: Reprinted with permission from the Improving Citizenship Education Handbook c 1981 by Fulton County School System. These materials prepared pursuant to grant from Title IV-C of the Elementary and Secondary Education Act (Public Law 93-380) pages 25-28.

TO THE TEACHER:

CONCEPTS: Free press, due process, constitutional rights
TERMS: Coroner, bludgeoned, inquest, indict, seditious libel
OBJECTIVES: Students will be able to:

(1) Identify and paraphrase those rights which an accused person has when involved with the criminal justice system.
(2) Apply skills of legal reasoning to real and hypothetical cases involving constitutional issues.
(3) Analyze the conflict between two democratic values -- free press and the guarantee of a fair trial -- and discuss the consequences of balancing them.

MATERIALS: Handouts: "Sheppard v. Maxwell," "Gannett v. DePasquale", and "Decision Making".
PROCEDURES: (1) Begin with a discussion of the Bill of Rights. However, just having students read and memorize such rights is not productive without analyzing how the courts have wrestled with interpreting and applying rights to new situations. Briefs of two cases: "Sheppard v. Maxwell" and "Gannett v. DePasquale" are included for students to see that two or more constitutional rights may conflict. Upon reading the cases and identifying the facts, the issues, and the opposing arguments, students can use the decision-making diagram to help prepare an opinion on the matter.
(2) Before any decisions are given orally, a "fish-bowl" exercise may be used with the class. Nine chairs may be set up at the front of the room. Names of the Supreme Court Justices who served at the time the case was heard may be placed on the backs of the chairs. When the "Supreme Court" has given its opinion, the calss can then be invited to participate.
(3) After both cases have been discussed or role-played, the teacher may want to have students summarize what they have learned and how they think the conflict between free press and fair trial should be balanced.

SHEPPARD V. MAXWELL

384 U.S. 333 (1966)

On July 4, 1954 Dr. Sam Sheppard reported to police that his pregnant wife had been bludgeoned to death in their upstairs bedroom. A prominent medical doctor of Cleveland, "Dr. Sam" told police that he had been dozing in front of the TV downstairs when he was awakened by a cry from upstairs. He ran upstairs and saw a "form" next to his wife's bed. As he struggled with this "form," he was struck on the back of the neck and knocked unconscious. When he recovered, he discovered that his wife was dead.

Even though the coroner did not believe his story, Sheppard was not charged with anything for weeks. Family and friends had removed him to a nearby clinic operated by his family to care for his injuries. Meanwhile, a series of editorials began appearing in the local newspapers charging a cover-up and that "somebody was getting away with murder." An inquest was held on July 21st in a school gymnasium packed with reporters, TV crews, photographers, and newsmen. Dr. Sheppard was questioned in full view of hundreds of persons, and afterwards the coroner announced to the audience that he could order Dr. Sheppard held for grand jury, but he would not do so.

Throughout the next week numerous local newspaper stories were published which implied Sheppard was the real suspect, that he had been involved with other women, and that police were stalling because of the physician's prominent status in the community. The same day that a front page editorial demanded, "Quit Stalling—Bring Him In," police arrested Sam Sheppard. On August 17th he was indicted for murder, and his case came to trial on October 18th, just two weeks before both the judge and prosecutor were up for reelection.

A list of prospective jurors was published in the newspapers, and even though TV cameras were not allowed in while court was in session, during recesses cameras flashed and TV crews moved in to catch the participants on film. Every juror except one later testified to reading opinions about the case in the Cleveland papers, and most of them saw broadcasts and heard radio commentaries relating to the case. Most of the media coverage was very biased against Dr. Sheppard.

The judge refused to grant the defense attorney's motion to continue the trial at a later date or relocate it in a less emotionally charged environment. He said that the court could not control everybody reporting about the case, nor could it continually harass the jury about listening to the trial commentaries. When one columnist reported a charge by a female convict that Sheppard was the father of her illegitimate child, however, the judge instructed the jury to pay no attention to that type of "scavenging."

Sheppard was convicted of murder and sentenced to life in prison. After 10 years of appeals, the case was finally heard by the Supreme Court in 1966. F. Lee Bailey, now famous as a defense attorney, argued that Sheppard was denied a fair trial because of the trial judge's failure to protect him from the massive prejudicial publicity pervading his trial. As a member of the U.S. Supreme Court, *how would you rule* on the issues in this case?

GANNETT VS. DEPASQUALE

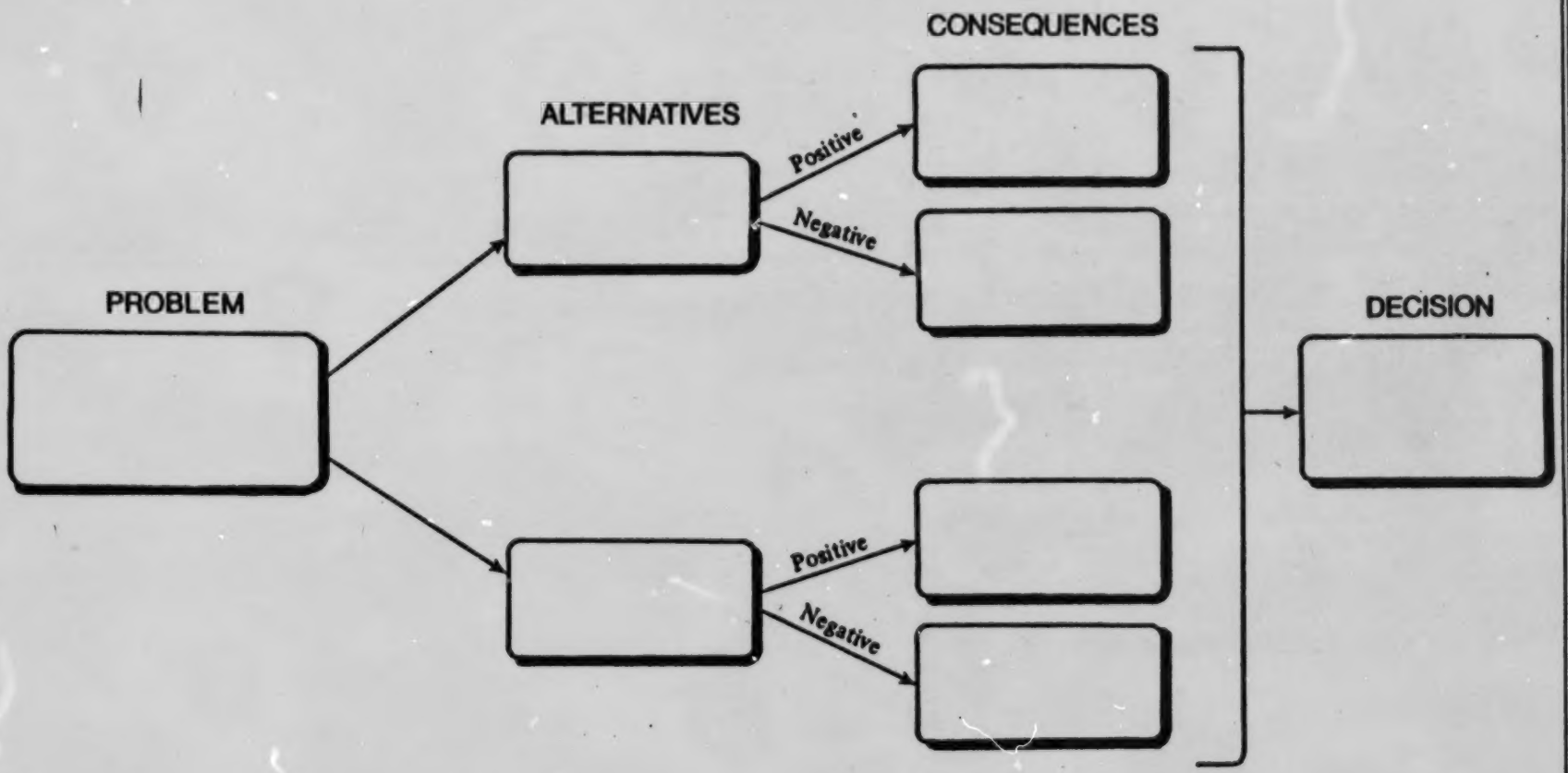
(443 U.S. 368, 1979)

Two men were being tried for murder in a County Court in New York. Their defense attorneys requested that both the public and the press be excluded from the pretrial hearing because all the buildup of adverse publicity was preventing the defendants from receiving a fair trial. The District Attorney did not object to closing the hearing, nor did a reporter who was present that day. The judge granted the motion.

The next day the judge received a letter from the reporter's publisher which asserted the right of the press to cover the hearing. The publisher requested access to a transcript of the proceedings of the hearing. The judge eventually scheduled a hearing about this request but afterwards decided that although the press had a constitutional right of access to the pretrial proceeding, such right had to be balanced against the constitutional right of the defendants to a fair trial. Under the circumstances presented the judge decided that the interests of the press and public were outweighed by the defendants' right to a fair trial.

The New York Supreme Court on appeal held that the judge's exclusionary orders transgressed the public's vital interest in open judicial proceedings and constituted an unlawful prior restraint in violation of the First and Fourteenth Amendments. The Court of Appeals of New York, on appeal, upheld the exclusion of the press and the public from the pretrial proceeding. Now, the case has come before the U.S. Supreme Court. If you were a Supreme Court Justice, how would you decide upon this issue, and what would be your reasoning?

Decision Making



Enlarge diagram if additional alternatives or consequences are needed.

TITLE: The Right to Bear Arms
CATEGORY: Individual Rights and Due Process and Constitutional Law
DESCRIPTION: A detailed summary of the gun control issue including historical, 2nd Amendment and subsequent laws and events, and a survey of the impact and issues related to the current 1968 federal law.
AUTHOR/PUBLISHER: Cochran, Ellen D. "The Right to Bear Arms", STREET LAW NEWS, Vol. 1, Issue 1, Spring, 1981, Pgs. 2-4, National Street Law Institute, 605 G Street, N.W., Suite 401, Washington, D.C., 20001. Used with permission.

TO THE TEACHER:

The author of this article, Ellen D. Cochrane, made the following statement in her excellent analysis of the gun control issue:

GUN CONTROL AND LRE THEMES

For law-related educators, there are several familiar themes in the gun control issue. While stronger gun control legislation, capable of sustainin- constitutional challenge, could be passed at the federal level, it seems unlikely that Congress will take this action. Should well organized lobbying efforts by gun control opponents have greater influence with Congress than the results of national public opinion polls which indicate that a majority of Americans favor tightening of federal laws?

There are millions of law-abiding owners of handguns. How seriously would their rights be restricted by banning public access to handguns? How well would banning public access to handguns protect society from violent crime?

Information on both sides of the issue can be obtained by writing Handgun Control, Inc., 810 18th Street, N.W., Washington, D.C., 20006; and The National Rifle Association, 1600 Rhode Island Avenue, N.W., Washington, D.C., 20036.

Ms. Cochrane's entire article is reprinted for both teachers and students. It is an excellent resource for debate, discussion preparation for sociological surveys, U.S. History and U.S. Constitution courses, and for personal understanding.

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FOR STUDENT and/or TEACHER:

POINT/COUNTERPOINT

"...THE RIGHT TO BEAR ARMS..."

By Ellen D. Cochrane

* 21,456 murders in 1979
* Estimated 150 million firearms in private hands
* Represents 2% of all violent crimes in 1979
* Only 1/4 of 1% of all firearms used in violent crimes

Gun control is a recurring issue in this country. The attempted assassination of President Reagan dramatically refueled the debate just as attention was dwindling from the death of John Lennon.

The debate over gun control is highly emotional and often speculative. The arguments range from slogans like "Guns don't kill people, people kill people" to highly specious analogies between countries with strict gun control laws and the U.S. Arguments often obscure or distort the fundamental conflict underlying the gun control dilemma: an individual's right to own firearms versus society's need to be protected from violence.

Certainly, a framework must be established if one is to understand or debate public policy on the gun control issue. The material which follows summarizes the current federal law, considers the historical context and the opposing views of the Second Amendment and defines the range of controls possible.

WHAT IS THE CURRENT FEDERAL LAW?

In summary, the Gun Control Act of 1968 (see page107 for detailed outline) prohibits the sale to or possession of firearms by anyone who is: (1) convicted of or under indictment for a felony; (2) a fugitive; (3) an adjudicated mental defective; or (4) an unlawful user of drugs. Dealers may not sell handguns to anyone under 21 years of age, or shotguns and rifles to anyone under 18 years of age. Purchases of firearms must be made within the buyer's state of residence. (The exceptions are noted in the detailed summary of the law at the end of this article.) Identification showing age and place of residence is required of the buyer as well as his or her signature on a statement certifying eligibility to purchase the firearm. Anyone who manufactures, imports or deals in firearms must be federally licensed and must maintain records of all sales.

The Gun Control Act of 1968 was passed by Congress in response to the political assassinations of the early 60's and the volatile social environment of that decade. Congress' stated purpose of the law was to support law enforcement officials in combating crime and violence without restricting or discouraging private ownership or acquisition of firearms by law-abiding citizens.

Both opponents and advocates of gun control criticize the current law. Opponents of gun control argue that the law has not had any effect in reducing interstate sale of firearms and is burdensomely restrictive for collectors and hunters wanting to purchase a firearm out of state. Gun control advocates claim that the law is ineffective because it is full of loopholes and not restrictive enough.

THE HISTORICAL CONTEXT OF THE SECOND AMENDMENT

The belief that the individual has the right to have firearms is derived from the Second Amendment of the U.S. Constitution: "A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed."

Ratified in 1791, the Second Amendment intended to limit the size and power of a national standing (professional) army and guarantee the states' right to a militia. The state militia was viewed as a protection against the possibility of a tyrannical central government using the national army against the states.

This fear of a central government grew out of the colonial experience. Under British rule, the colonists were considered to be English subjects, yet were deprived of many of their rights under English law. While recognizing the need of a standing army to serve the country, the drafters of the Bill of Rights also believed that an armed citizenry was required as a fundamental check against the possible tyranny of a central government.

In 1903, the state militias were renamed the National Guard, were put under the direct authority of the President, and were provided arms by the Federal government.

THE CONSTITUTIONAL DEBATE

Opponents of gun control view the Second Amendment as guaranteeing an individual's right to keep and bear arms. They reach this interpretation in two ways: first, through the definition and purpose of the militia, and second, through their view of the intent of the amendment.

The Militia Act of 1792 established two classes of the militia: the "organized militia" which met regularly for drills and training, and the "enrolled militia" which was a listing of all able-bodied males between 17 and 44 years of age.

The U.S. Militia today retains the two classes: the "organized militia" which consists of the National Guard, and the "unorganized militia" which consists of all able-bodied male citizens between the ages of 17 and 45. (See Title 10 of the U.S. Code, Section 311.)

Opponents of gun control argue that, since the militia was established as a check against federal tyranny, the National Guard cannot serve that purpose because it is under federal control. Therefore, the "unorganized militia" must be the militia protected by the Second Amendment and its members retain the right to "keep and bear arms."

Second, the intent of the Amendment is viewed by opponents of gun control as protecting the right to keep and bear arms for self-defense as well as the common defense. The use of firearms was a necessity for the settlers of this country both as self-defense and as a tool for obtaining food. Opponents of gun control suggest that the framers of the Constitution and Bill of Rights considered the right to gun ownership as unquestionable.

Gun control advocates basically do not view gun control as a constitutional issue. They argue that the purpose of the militia was (1) to provide the states a counterbalance to the national army; and (2) to provide national defense in the event of foreign invasion. An armed citizenry in modern society cannot possibly fill either function unless citizens were allowed to keep and bear arms in common military use, such as tanks, machine guns, etc. Since the ownership of modern weapons of war is prohibited with no constitutional restrain, advocates suggest that the question is where do we draw the line of firearms control.

Furthermore, the gun control advocates point out that the militia is in fact a national militia. The organized militia of the U.S. Code is the National Guard and is under federal regulation. The "unorganized militia" is all other members of the militia eligible to be drafted by the federal government.

COURT DECISIONS

Most people agree that the Bill of Rights do not contain absolute freedoms, but rather individual rights which must be balanced against the collective rights of society. This is evidenced in the court cases which have dealt with challenges to state and federal gun control laws as being unconstitutional.

In cases challenging state gun control laws, the courts have upheld the state laws. The courts have held that the right to keep and bear arms is not an individual right that prohibits the states from restricting gun ownership.

In a 1939 case challenging the constitutionality of the National Firearms Act of 1934, the Supreme Court upheld Congressional power to restrict certain types of individuals (e.g., convicted criminals) from possessing firearms. The Court also upheld the mandatory registration and taxation of certain types of firearms (e.g., sawed-off shotguns) [U.S. v Miller, 307 U.S. 174 (1939)].

WHAT IS "GUN CONTROL?"

Gun control is an imprecise phrase referring to any of five types of restrictions which can be put on firearms.

1. Market restrictions could limit the number of manufacturers, importers and dealers of firearms. It could also limit the number and type of firearms manufactured, imported and retailed. Arguments against this type of restriction are:

   A. by limiting the supply, the cost will go up;
   B. the illegal gun traffic into the country will increase;
   C. only "favored" or well-connected manufacturers, importers, and dealers will be licensed; and,

D. by itself, it denies access only to those who can't afford firearms not to criminals or the insane.

2. Registration of all firearms purchases is simply a listing of owners and serial numbers of the firearms owned. Common objections to registration are:

   A. massive amounts of costly paperwork would be required;
   B. it creates the potential for governmental invasion of privacy and confiscation of arms, especially if records are computerized; and,
   C. it does not deny felons or mental defectives access to firearms.

3. Permissive Licensing is similar to registration but allows for restricting felons' or mental defectives' access to firearms. It would require the buyer to apply for a license and require a process for establishing the buyer's eligibility. Permissive licensing could be applied to rifles and shotguns only, or to handguns as well. Objections to this form of control are:

   A. massive amounts of costly paperwork;
   B. the potential for federal invasion of privacy;
   C. the possibility of an unreasonably lengthy waiting period through bureaucratic red tape and lost paper in processing applications; and;
   D. the inability to adequately screen out mentally disturbed buyers of handguns.

4. Restrictive Licensing would require the purchaser to establish a legitimate purpose for owning a firearm. The inherent problem with such a law is defining "legitimate purpose". Generally, restrictive licensing is discussed as a control on handguns, not on rifles and shotguns. New York's licensing law on handguns defines legitimate purpose as a job requirement. That is, police, military officers, security guards, etc., are able to obtain licenses. Arguments against restrictive licensing are:

   A. those persons whose jobs require that they carry handguns are issued them by their employer; and,
   B. self-defense is not considered a "legitimate purpose". Yet, this is the most common reason people give for buying handguns.

5. Prohibition of possessing firearms or only handguns is the most stringent of possible controls. Prohibition of all firearms would effectively ban hunting and all sports shooting. It is not seriously proposed or considered. Prohibition of "Saturday Night Specials" is seriously considered. "Saturday Night Special" refers to any cheap, unreliable handgun. Objections to any prohibition laws are:

A. the potential for a police state in which only law enforcement and military officers have arms;
B. the fear that prohibition of handguns will lead to prohibition of all firearms; and,
C. the necessarily arbitrary definition of "Saturday Night Specials" (e.g., under $50, $75?).

Some have suggested that violent gun-related crimes can be reduced by means other than restrictions on guns. While an exploration of "alternative gun control" programs is beyond the scope of this article, recommendations include stiff, mandatory sentences for the criminal use of firearms and restrictions on the manufacture, sale and possession of ammunition.

THE GUN CONTROL ACT OF 1968

* It is unlawful for anyone to engage in the firearms business unless they are a federally licensed manufacturer, importer or dealer of firearms.

* It is unlawful for anyone except a licensed manufacturer, importer, dealer or collector to ship, transport or receive firearms in interstate commerce. Exceptions:
  1. A person may mail a legally owned firearm to a licensed dealer for repair or customizing and the dealer may return the firearm to its legal owner in interstate commerce.
  2. A dealer may also sell or mail firearms to law enforcement officers for use in their official duties.

* It is unlawful for any person not licensed to transport into or receive in his or her state of residence any firearm obtained outside that state. Except:
  1. If a firearm is acquired by inheritance and the heir can legally purchase or possess such a firearm in his or her state of residence.

* It is unlawful for anyone not licensed to transfer, sell, trade, give, or deliver any firearm to any person not a licensed dealer who resides in another state; except:
  1. A person may loan or rent a firearm to another for temporary use for lawful sporting purposes.

* It is unlawful for a licensed dealer to sell or deliver:

  -- a rifle or shotgun or ammunition for these to anyone under 18 years of age;
  -- any other firearm or ammunition to anyone under 21 years of age;

-- any firearm or ammunition to anyone where the purchase or possession by such person would violate any state or local law;
-- to anyone who the licensee knows or has reasonable cause to believe does not reside in the state.

Exceptions:
1. Does not apply to the sale or delivery of a rifle or shotgun to a resident of an adjacent state if such transaction is allowed by both states; and,
2. to a person hunting or participating in a shooting contest out-of-state whose rifle or shotgun has been lost, stolen or broken and give the name of the chief law enforcement officer in the person's place of residence. The dealer must send a copy of the sworn statement to the named officer.

* It is unlawful for a licensed dealer to sell a firearm to anyone not appearing in person unless the buyer submits a sworn statement that such purchase does not violate any federal, state or local law and gives the name and address of the chief law enforcement officer of the buyer's residence. The dealer must send by registered mail or certified mail a copy of the statement and description of the firearm to the named officer, and delay shipment at least 7 days after the dealer receives the postal return receipt.

* It is unlawful for any licensed dealer to sell or dispose of any firearm or ammunition to anyone the dealer knows or has reason to believe is:
  -- under indictment for, or has been convicted of a felony;
  -- a fugitive from justice;
  -- an unlawful user of or addicted to marijuana, any depressent or stimulant drug, or narcotic drug; or,
  -- has been adjudicated as a mental defective or has been committed to a mental institution.

* Any violations of these provisions are punishable by imprisonment up to 5 yrs. or a fine up to $5,000 or both.

* Transporting or receiving a firearm or ammunition with reason to believe it will be used or with intent to use it to commit a felony is punishable by up to 10 yrs. imprisonment or $10,000 fine or both.

TITLE: Will Handgun Control Help or Hurt Crime Victims?
CATEGORY: Individual Rights and Constitutional Law
DESCRIPTION: Arguments pro and con on Handgun Control are paired and are followed by lead questions to generate the discussion.
PUBLICATION: "Bill of Rights"in Action: Crime and Its Victims, Vol. XII, No. 2, April, 1978. Published by Constitutional Rights Foundation, pages 21-22. Reprinted with permission.

TO THE TEACHER: Below are four situations to introduce the dilemma to students.

Ms. Miller, age 20, attended a large university. She carried a small pistol in her purse for protection, since she sometimes had to walk on campus at night. One evening, while walking to the school library, Ms. Miller was attacked by a young man who attempted to rape her. Ms. Miller was able to grab her pistol during the struggle and shot her attacker twice in the head. He died soon after. DO YOU THINK MS. MILLER WAS JUSTIFIED IN KILLING HER ATTACKER?

Late one night, Mr. and Mrs. Black were awakened by noises. After getting his handgun, which he always kept in the bedroom, Mr. Black moved cautiously toward the part of the house where the noises were coming from. Suddenly, a shadow darted toward the front door. Mr. Black fired. When he put the lights on, Mr. Black found a dead man on the floor. Burglary tools were scattered where the man had fallen. No weapon was found on the burglar. DO YOU THINK MR. BLACK WAS JUSTIFIED IN KILLING THE BURGLAR?

Mr. and Mrs. Manlow often fought with one another. Recently their fighting had become quite bitter and violent. One night Mr. Manlow came home drunk and started to beat up his wife. At one point during the battle, Mr. Manlow slugged his wife so that she fell against the night-stand in the bedroom. As her husband approached, reready to hit her again, she grabbed a handgun from the nightstand drawer and fired point-blank at him. He died instantly. DO YOU THINK MRS. MANLOW WAS JUSTIFIED IN KILLING HER HUSBAND?

Mrs. Jacobs, a widow aged 53, was afraid of prowlers and burglars, so she bought a revolver for protection. One night she heard someone moving around her back yard. She got her revolver and shot three times into the darkened yard. Her neighbor's son, age 17, was found in the yard dead. He had been returning some garden tools his father had borrowed earlier from Mrs. Jacobs. DO YOU THINK MRS. JACOBS SHOULD BE PROSECUTED FOR KILLING HER NEIGHBOR'S SON?

* * * * * *

Teachers may wish to share the following statistical information and to find updated 1980 statistical information for comparison.

STATISTICAL INFORMATION (1978)

Guns -- especially handguns -- figure prominently in crime after crime. For example, in 1974, handguns were used to murder 11,000 persons in the United States. At the same time, however, people are increasingly arming themselves with guns for self-protection.

It has been estimated that about half of all American families possess at least one firearm in the home. And the nation's gun supply is growing. In 1974, about 2.5 million handguns were manufactured in the U.S. Another half-million were imported from other countries. Today, Americans own more than 45 million handguns.

Public opinion polls indicate that Americans generally support moderate gun control laws. A Harris Survey published in 1975 reported that 73% of the adults in the U.S. favored a federal law requiring all persons to register all gun purchases. On the other hand, a law which would have prohibited the private ownership of handguns in Massachusetts was rejected by the voters of that state in 1976.

For fifty years, federal laws have existed regulating the sale and distribution of firearms. In addition, state and local governments have passed other gun control laws. Yet, many people argue that stronger laws, such as those which would require handgun registration and licensing are needed.

In the following chart, the major arguments for and against stronger handgun control laws are summarized. After reviewing both sets of arguments, decide for yourself if stronger handgun control laws would help or hurt crime victims.

HANDGUN CONTROL ARGUMENTS

Those Opposed to Stronger Handgun Control Laws Say...	Those in Favor of Stronger Handgun Control Laws Say...
1. American citizens have a legal right to own handguns under the Second Amendment of the Bill of Rights.	1. The U.S. Supreme Court has ruled several times that the Second Amendment guarantees states the right to maintain militias, not private citizens the right to own guns.
2. Americans have owned handguns throughout our country's history. New handgun controls would destroy this time-honored tradition.	2. Americans may have been forced to own handguns for self-protection when this country was an uncivilized wilderness. But today, modern police departments exist to protect the public.

HANDGUN CONTROL ARGUMENTS - CONTINUED

Those Opposed to Stronger Handgun Control Laws Say...	Those in Favor of Stronger Handgun Control Laws Say...
3. Stronger gun control laws will make it more difficult for citizens to protect themselves and their families. Crime is a threat to everyone, and the police are not usually around when a criminal appears.	3. A person who possesses a handgun for protection is more likely to be killed with his own gun by a relative or a friend, than a person who does not own a handgun is likely to be killed by a criminal. The best protection is not to have a handgun in the home.
4. There is no evidence which proves that existing gun control laws have reduced crime and violence. New York City has the strongest handgun control law in the nation, yet crime and violence are more serious there than in many other cities without strong gun laws.	4. We have never had strong gun control laws covering the entire nation. Making handguns more difficult to obtain in the U.S. should significantly reduce crime and violence.
5. Longer prison terms and the death penalty should be imposed more frequently on criminals who use handguns. This will reduce crime more effectively than additional gun control regulations. "Guns do not kill, people do."	5. Crimes committed with guns occur so often today because handguns are so easily available. Criminals will continue to frequently use guns as long as there is little control over their sale and possession.
6. Additional gun control laws will be difficult to enforce. Criminals will still be able to get handguns illegally.	6. Strong registration and licensing requirements will make it more difficult for criminals to quickly and legally buy handguns. Those criminals who do manage to get guns unlawfully will face additional penalties for illegal possession.
7. Even if gun control laws do reduce the use of handguns, criminals will simply shift to other weapons.	7. Guns are more fatal than other weapons. A person shot with a gun is five times more likely to die than a person stabbed with a knife.
8. 20,000 federal, state, and local gun control laws already exist. Additional laws will place too much of a burden on sportsment and otherlaw-abiding citizens.	8. The main purpose of handguns is to kill people. Because so many handguns exist in the U.S., more people die by gunfire in this country each year than in all the rest of the countries of the world combined.

FOR DISCUSSION

1. What is the best argument for stronger handgun control laws? What is the best argument against stronger handgun control laws?

2. Do you think stronger handgun control would be likely to help or hurt crime victims? Explain.

3. How do you feel about a law which would forbid the private ownership of handguns altogether?

4. Find out from your local police department or public library what state and local gun control laws exist in your area.

5. Rank order 1-8 the following strategies to help crime victims. Rank the strategies from most to least desirable, according to your point of view. Compare your ranking with those prepared by your classmates.

___ more handgun controls
___ more victim compensation
___ stiffer prison terms
___ more use of the death penalty
___ stronger police departments
___ better enforcement of fraud laws
___ stronger penalties against child abuse
___ more rape crisis centers

TITLE: Teaching About Student Rights and Responsibilities
CATEGORY: Constitutional Law and the Bill of Rights
DESCRIPTION: This article contains information and sample lesson plans related to juvenile law and education.
AUTHOR/EDITOR: David Naylor
PUBLISHER/SCHOOL DISTRICT: Update On Law-Related Education, Fall '79. Used with permission.

TO TEACHER:

This one's for you, an article specifically designed to provide general information as well as useful activities for the teaching of education-related juvenile law.

Instructions:

Step 1: Read and enjoy.

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CLASSROOM STRATEGIES

David Naylor

Teaching About Student Rights and Responsibilities

What every student (and teacher) should know

Student rights and responsibilities is a hot topic in our society. Within the past 10 years, court decisions have helped transform it from a largely ignored and discredited subject to a subject of vital importance, capable of arousing strong emotions among students, parents, teachers, and school administrators.

Despite (or perhaps because of) its pervasive and volatile character, teachers often give student rights and responsibil-

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ities a wide berth in the classroom. Some think it's unworthy of discussion, too frivolous and too far removed from "important" subject matter to be given valuable class time. Others see it as too controversial for classroom discussion, a veritable Pandora's box capable of inflaming student passions and engendering community wrath. And still others imagine that it is too complex to deal with intelligently, requiring more knowledge than teachers can be reasonably expected to have.

In actuality, student rights and responsibilities is neither too frivolous, too controversial, or too complex. Properly handled, the subject can illuminate a host of vital issues and become an integral part of the school curriculum. Here's a structure for dealing with student rights and responsibilities, a range of issues and approaches that can be used to teach students about this topic effectively.

A Rationale

Perhaps the best response to the question, "Why should I teach about student rights and responsibilities?" is simply, "You should teach about it because it's too important to ignore." Student rights and responsibilities is an excellent vehicle for helping students clarify and critically examine some of the most basic values of our society, some of the most fundamental characteristics of our legal system, and some of the most important developments of our society. Furthermore, as Alan Levine and Eve Carey observe in their very informative and useful book, *The Rights of Students* (Avon Books, 1977), students spend a large part of their lives in and around schools.

> [T]he policies that govern the school have as much impact on students' lives as most policies formulated by the President and Congress have on the lives of adult citizens. It is as important, therefore, for students to be able to discuss school policies openly as for adults to be able to debate freely issues of national policy.

Student rights also serve as a vehicle "for exploring moral and ethical reasoning, and for fostering a search for effective ways to deal with contemporary value conflicts." (*Values, Law-Related Education and the Elementary School Teacher*, NEA, 1976.) By studying the evolution of student rights and responsibilities, students become more aware of how change occurs and more capable of understanding the importance of change in the life of our country. By using student rights and responsibilities as a focal point, teachers can help students understand everything from constitutional law to administrative regulations, from judicial review to judicial remedies.

And *you* can teach about student rights and responsibilities. A growing number of books, journals, articles, and other resources—both print and nonprint—are available. I've noted a number of them in this article. And many law-related courses and workshops deal with student rights and responsibilities. One way to find out what's available in your area is to contact the ABA's Special Committee on Youth Education for Citizenship (YEFC), at 1155 E. 60th St., Chicago, Ill. 60637.

We have come too far, learned too much, and produced too many resources for the myth of legal complexity to serve as an effective deterrent. The remainder of this article, therefore, is designed to suggest an approach to teaching about student rights and responsibilities and to provide examples of a variety of teaching strategies that you can put to work in your classroom.

1.

Issue One

Classification or Capacity?: Do Students Have Rights?

Before looking at student rights cases, teachers should provide a broader perspective. The development of student rights can be described as the move from a classification to a capacity, an evolutionary history which has much in common with other groups in American society. For example, in the famous case of *Dred Scott v. Sandford* (15 L. Ed. 691 [1857]), the Supreme Court defined the legal status of a slave. Speaking for the Court, Chief Justice Roger Taney wrote:

> The only matter in issue before the court, therefore, is, whether . . . [slaves] are citizens of a State, in the sense in which the word "citizen" is used in the Constitution of the United States. . . .We think they are not, and that they are not included and were not intended to be included under the word "citizen" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States.

Depriving slaves of rights accorded to citizens was not an isolated instance. As a result of being classified as "women," "juveniles," "prisoners," and "students," other groups have been denied the constitutional rights of citizens.

The importance of being classified in such a way is that once you're included in the group, the issue of rights becomes moot; it is no longer germane. It is not surprising, therefore, to find that in the landmark case involving student rights, *Tinker v. Des Moines Independent School District* (393 U.S. 503), Justice

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Abe Fortas, writing for the Supreme Court, acknowledged this legacy. He wrote:

> In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.

The movement of students from a classification to a capacity, a history shared by the other groups listed above, reveals one of the most fundamental characteristics of our legal system and of our life as a country—the concept of change. By studying student rights and responsibilities from this perspective, students increase their ability to understand the society in which they live and the kinds of concerns, value conflicts, and mechanisms that are part of how society changes.

Sample Lesson One

Topic: Do Students Have Constitutional Rights?

Strategy: Conflicting Quotations

Procedures:

1. Give each student a copy of the Fortas quote and the two quotes below.

> [T]he constitutional rights of adults and juveniles are not coextensive.... "The state's authority over children's activities is broader than over like actions of adults".... [T]he conduct of minors may be constitutionally regulated to a greater extent than that of adults.
>
> Federal District Court Judge Sheridan in *Bykofsky v. Borough of Middletown* (1975)

> It is abundantly clear from the development of law over a period of two centuries or more that the relationship of the state to children is a parental one. . . .[T]he state stands in *loco parentis* to children in school. Thus a child has no more right to defy the school than he does to defy his own parents.
>
> Federal District Court Judge Young in *Cordova v. Chonko* (1970)

2. Discuss each quotation, using such questions as:

   How are the words "child" and "adult" defined in your state (e.g., in Ohio, a "child" is a person under the age of 18.)

   In what ways does the law provide different treatment for "children" and "adults"? (e.g., contracts, property, inheritance, capacity to commit crimes. See Alan N. Sussman, *The Rights of Young People* [Avon Books, 1977] for further information.)

   To what extent are parents free to impose rules and regulations on their children? Should Bill of Rights protections apply to family members in the privacy of the home?

   In what ways could the school be said to act *in loco parentis* (in the place of parents)? How do the roles of parent and school differ? Should Bill of Rights protections apply in the school?

3. Use a piece of oaktag or chart paper to prepare a chart, then ask students to compare and contrast the legal obligations of adults, parents, children, school officials, and students. Encourage them to suggest reasons for similarities and differences, and write their responses for each of these five groups. Display in a prominent place in the room and refer to it as the unit progresses.

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2.

Issue Two

Competing Interests: Which Should Be Given Preference?

Since the Constitution of the United States contains no direct reference to education, the states have assumed the power to control and regulate it. But the actual administration of schools in almost every state is delegated by statute to local districts. In this way, local school boards and school officials acquire the authority to make the rules and regulations which govern the day-to-day operation of the schools.

Under common law, however, parents had control over the education of their children. While state statutes have modified parental authority, parents continue to have many educational obligations. On occasion, parents and state officials have disagreed on children's education. For example, parents who want to educate their children at home may well run afowl of state compulsory education laws.

The wishes of children themselves have been ignored for the most part. School conflicts typically deal with disputes between parental wishes and state wishes. Yet the very nature of our educational system suggests that at least three interests are at stake—those of the state, those of the parent, and those of the child. The following exercise is designed to help students focus on the potential conflict between these three interests. The essential question raised is, "When conflicts arise, which interests should be given preference?"

Sample Lesson Two

Topic: Which Interest Should Be Given Preference?

Strategy: Forced Choice

Directions: Each of the areas listed below is of significance to students, their parents, and the school. For each, indicate which of these three groups you believe should have the right to decide if a conflict develops. Place an "x" in the appropriate space to indicate your response.

Who Should Control . . .

1. Access to a student's report card?
   Student___ Parent___ School___
2. Attendance at school?
   Student___ Parent___ School___
3. Choice of the type of elementary or secondary school to attend?
   Student___ Parent___ School___
4. Access to student scores on an I.Q. tests?
   Student___ Parent___ School___
5. Selection of what courses or subjects to study?
   Student___ Parent___ School___
6. Nature of the course content?
   Student___ Parent___ School___
7. Type of instructional materials used?
   Student___ Parent___ School___
8. Access to a student's locker?
   Student___ Parent___ School___
9. Use of corporal punishment?
   Student___ Parent___ School___
10. Participation in the flag salute?
    Student___ Parent___ School___

Procedures:

1. Distribute a copy of the exercise to each student. Review and clarify directions (and items if necessary).

(Continued on page 43)

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Classroom Strategies

(Continued from page 16)

2. Use a show of hands to tally student responses. Record them on the chalkboard.
3. Group items under appropriate categories and discuss results obtained. Encourage students to share reasons for their choices.
4. Have students suggest criteria for determining when each of the interests (student, parent, school) should be given priority.

3.

Issue Three

Conflict and Controversy: What Role for the Courts?

Since the famous *Brown v. Board of Education* decision in 1954, state and federal courts have become increasingly involved in school matters. The *Tinker* case in 1969 gave greater impetus to this trend. More and more, such school issues as busing, finance, appearance of students, and expression of students and teachers are being decided by the courts.

Dramatic and controversial remedies have resulted. These have included placing a Boston high school under judicial control because of school desegregation problems and briefly shutting down the entire educational system in the state of New Jersey until the state legislature enacted a more equitable system of school finance.

The dilemma confronting the courts was discussed by Supreme Court Justice Abe Fortas in *Epperson v. Arkansas* (393 U.S. 97[1968]), the decision which invalidated that state's anti-evolution statute. He wrote:

> By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values. On the other hand, "[T]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools."

"Lay off, Your Honor. I'm not half so heinous once you get to know me."

Student rights issues provide an excellent opportunity for teaching about judicial review and the role of the courts. Examining these issues can be used to further students' understanding of such fundamental concepts as federalism, the separation of powers, and the meaning of "government of law."

Sample Lesson Three

Topic: What Role for the Courts?
Strategy: Semantic Differential
Handout: Courts and Schools: How Do You Feel?

> Have the courts taken over control of our schools? Some people suggest that they have. For example, court decisions have forced many schools to alter their dress codes, discipline policies, and rules governing access to athletic facilities. How do you feel about court decisions that force schools to change some of their rules and regulations? Indicate your views by placing an "X" on one of the spaces between each of the paired words below. Use only one "X" for each pair of words.

Wise	_ _ _ _ _	Foolish
Democratic	_ _ _ _ _	Autocratic
Necessary	_ _ _ _ _	Unnecessary
Fair	_ _ _ _ _	Unfair
Desirable	_ _ _ _ _	Undesirable
Warranted	_ _ _ _ _	Unwarranted
Comforting	_ _ _ _ _	Disturbing
Helpful	_ _ _ _ _	Harmful
Successful	_ _ _ _ _	Unsuccessful

Procedures:

1. Distribute a copy of the exercise to each student. Clarify instructions and provide sufficient time for students to complete the exercise.
2. Reproduce the exercise on the board or on a transparency. Tally and record student responses.
3. Discuss student responses. (Note: This exercise can be used before or after investigating this issue. If you do it before, encourage students to express their feelings and to develop hypotheses to be tested as the unit progresses. If you do it afterwards, ask students to cite specific examples to support their views.)
4. Use student responses to explore such questions as:
   If education is a state function, how is it possible for federal courts to rule on cases involving school rules and regulations?
   Does judicial review give too much power to the courts? How (if at all) should judicial review be restricted?

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4.

Issue Four

Students and the First Amendment: What's Permitted?

In the landmark *Tinker* case, the Supreme Court held that:

> First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

Yet in that same decision, the Court also recognized the right of school authorities "to prescribe and control conduct in schools." "Our problem," the Court stated, "lies in the area where students in the exercise of First Amendment rights collide with the rules of school authorities."

You can illustrate the difficulty of this problem by focusing on specific clashes over First Amendment rights. While many different teaching strategies can be used to examine such conflicts, two are recommended especially.

One approach is to focus on a specific situation, through use of an actual or hypothetical case. The case study method is an example of this approach, a variation of which is provided in "Sample Lesson Five" in this article. An article in the Fall, 1977 *Update* describes this method in detail. The article is especially useful since it focuses on the *Tinker* case.

The other approach uses a series of critical instances, either real or hypothetical. Examples of this approach include the forced choice exercise below and the question and answer technique, examples of which may be found in *The Rights of Students* and other titles in the American Civil Liberties Union Handbook Series.

Sample Lesson Four

Topic: How Has the First Amendment Been Interpreted in the School Setting?
Strategy: Forced Choice
Directions: Each of the following situations deals with student claims to First Amendment rights. Indicate your beliefs about each of these situations by using one of the following responses. Place the appropriate letters in the space provided to the left of each situation.

SA = Strongly Agree
SD = Strongly Disagree
A = Agree D = Disagree
U = Uncertain

_____ 1. Students have the right to speak out in the classroom whenever they wish to make their own views known.
_____ 2. Students have the right to wear buttons, armbands, and other insignia which represent their views.
_____ 3. Students have the right to picket, hold rallies, and engage in peaceful demonstrations during school hours to protest school policies.
_____ 4. Students have the right to distribute literature on school property free from any type of censorship by school officials.
_____ 5. Students have the right to publish articles in the school newspaper that criticize school policies and/or school officials.
_____ 6. Students have the right to place messages, notices, and other material on school bulletin boards to express their views.
_____ 7. Students have the right to form their own clubs and associations no matter how controversial the organizations are.
_____ 8. Students have the right to refuse to salute the American flag.
_____ 9. Students have the right to publish whatever they wish in school-sponsored newspapers.
_____ 10. Students have the right to refuse to participate in any religious ceremonies conducted in school.

Procedures:
1. Give each student a copy of the exercise. Clarify the instructions and provide ample time for students to complete it.
2. Tally student responses. Encourage students to express reasons for their choices.
3. Have students identify some of the reasons why school officials might oppose student claims (e.g., interference with the proper and orderly operation of the school; risk of violence or disorder; age and maturity of students; captive nature of students; invasion of the rights of others; desire to impose moral standards). Ask students to indicate which factors apply in each situation and to assess their value.
4. Use resources such as Levine and Carey's *The Rights of Students* to make students aware of how the courts have ruled in each of these situations.
5. Invite the school principal, superintendent, school board attorney, and other resource persons to discuss these issues with the class.

5.

Issue Five

Students and Due Process: What's Required?

The Fifth and Fourteenth Amendments guarantee that no person shall "be deprived of life, liberty, or property without due process of the law." Assuring a fundamental fairness in government proceedings, the right of due process protects the citizen against unfair, unreasonable, and arbitrary laws (substantive due process) and unfair, unreasonable, and arbitrary proceedings (procedural due process).

Once students are recognized as citizens, the question becomes whether the constitutional rights of due process apply in the school setting. Gradually, though often reluctantly, courts have been saying that they do. However, court decisions are by no means uniform.

For example, no clear guidelines have emerged on whether students' hair length or clothes can be regulated. Some federal courts of appeal (the First, Second, Third, Fourth, Seventh, and Eighth Circuits) have said that wearing one's hair at a certain length or wearing a beard is constitutionally protected. Other federal courts of appeal (the Fifth, Sixth, Ninth and Tenth) have not been receptive to this claim. The result is a confusing set of standards which vary according to the circuit court district in which the school is located.

Guidelines for procedural due process, however, are more clearly established. The Supreme Court's decision in *Goss v. Lopez* (419 U.S. 565 [1975]) did much to clarify students' rights to procedural due

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process in schools, although troubling questions still remain.

Sample Lesson Five

Topic. Are Students Entitled to Due Process in Disciplinary Proceedings?
Strategy. Case Study Method *(Goss v. Lopez)*
The Facts

During a period of widespread student unrest in the Columbus, Ohio public school system, school administrators suspended many students for disruptive or disobedient behavior. The suspensions were for 10 days. School officials refused to give students a hearing to determine the facts underlying the suspensions.

The students contended that they had been treated unfairly. They argued that school officials had erred by depriving them of their right to an education without a hearing to determine the accuracy of the charges. That denial, they charged, violated their Fifth and Fourteenth Amendment right to due process.

The school officials disagreed. They declared that neither the U.S. Constitution nor the Ohio Constitution guarantees the right to an education at public expense. Thus, they pointed out, the Due Process Clause does not apply to suspensions or expulsions from school. Furthermore, they suggested that even if the Due Process Clause does protect a right to public education, it comes into effect only when the state subjects a student to a "severe detriment or grievous loss." Since the loss of 10 days of school is neither severe or grievous, the Due Process Clause does not apply to these cases.
The Issue

Does the Due Process Guarantee require school officials to grant a hearing to students before suspending them for 10 days?
The Opinions

Opinion I

1. Education officials and state legislatures—not federal courts—have the authority to determine rules that apply to routine classroom discipline.
2. Since Ohio law creates the right to a free public education, Ohio law may also create the circumstances under which that right may be restricted or taken away.
3. Education in any meaningful sense includes teaching each pupil the necessity of rules and the need to obey them. The school fails the student if it does not properly discipline him when punishment is merited or if its disciplinary actions are so formalized that they invite a challenge to the teacher's authority.
4. A decision to require due process procedures for school suspensions would turn the teacher-student relationship into an adversary process. Such a decision could seriously impair the ability of school officials to maintain order and decorum.
5. The argument that a student's interest in education is infringed by short suspension is too speculative and too insubstantial to justify imposing a constitutional rule.
6. If student claims were upheld, due process protections would likely be held next to apply to many other routine school decisions (e.g., grading, promotion, curriculum requirements).
7. If due process is required in these instances, then it is required whenever government infringes *any* interest to which a person is entitled, no matter what the interest or how inconsequential the infringement. This would give courts a vast power, a whole new role in our society.

Opinion II

1. By establishing a public school system and requiring children to attend, Ohio has recognized that a student has a right to a public education. This right is a property interest which is protected by the Due Process Clause.
2. The Due Process Clause also forbids arbitrary actions which deprive a person of his liberty. If sustained, these charges could seriously damage the students' standing with their fellow pupils and their teachers, as well as interfere with later opportunities for higher education and employment.
3. A 10-day suspension is not a trifling matter and may not be imposed in complete disregard of the Due Process Clause. It is a serious event in the life of the suspended child and of serious consequence to his reputation.
4. At the very minimum, students facing suspension must be given *some* kind of of notice and afforded *some* kind of hearing. A student must be given oral or written notice of the charges against him, and if he denies them, an explanation of the evidence and an opportunity to present his side of the story. Due process requires at least these basic precautions against unfair findings and arbitrary suspension.
5. Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and basic hearing requirements should follow as soon as practicable.
6. The Due Process Clause does *not* require that hearings in connection with short suspensions give the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his

own witnesses to verify his version of the incident.

7. Longer suspensions, or expulsions for the remainder of the school term or permanently, may require more formal proceedings.

Procedures: (For variations of the case study method, see David T. Naylor, "Law Studies in the Schools: A Compendium of Instructional Strategies," *Social Education*, March, 1977, pp. 174-76.)

1. Present the facts and state the issue in *Goss v. Lopez* (either orally or in written form).
2. Distribute a copy of Opinion I to half the class and a copy of Opinion II to the other half.
3. Instruct students to read each of the seven arguments in the respective opinions and then rate each argument on basis of its strength. Use a 1-5 scale for this purpose, with 1 = very strong and 5 = very weak.
4. Discuss the issue raised in *Goss v. Lopez*. (You may wish to divide the class for this purpose.) Use a show of hands to ascertain how the class feels the case should be decided and how it feels the case was decided by the Supreme Court. Discuss.
5. Use student rankings to assess and analyze the strengths of the arguments advanced in Opinion I and Opinion II.
6. Since the Court decided in favor of the students, ask the class to evaluate the predictions made in points six and seven in Opinion I.

6.

Issue Six

Students and the Courts: What Lies Ahead?

The development of student rights in the past 10 years has had an important impact on schools. However, many issues need further clarification. How many of the constitutional rights of adults should be extended to students?

In the following exercise, several student rights issues, as yet unclarified, are presented in a hypothetical format. Students are asked to assume the role of judges and decide these questions. The exercise is designed to help students become aware of possible developments in student rights in the future.

"You're taking this truth-in-advertising business a little too seriously, Higgins."

Sample Lesson Six

Topic: What Lies Ahead?
Strategy: Hypothetical Situation

How Would You Decide?

1. Mark Duffy is a senior at Polk High School. Upon graduation, he plans to attend a very prestigious college in the East. That college has admitted Mark on the condition that he succeeds in getting at least "B" grades in all of his courses during his last semester at Polk.

   At the end of the semester, Mark receives 3 "A's", 2 "B's" and a "D" in American History. Very disappointed, Mark meets with the history teacher and principal in an effort to change the grade. He complains that the teacher's grading policies were arbitrary and unfair.

   Furthermore, Mark points out that he did not know he would get this low grade until the course was over. He failed the final exam and got a "D" on his term paper, which was returned only two days before the class ended. Mark's efforts to get the grade changed fail. Without a grade change, Mark will not be able to attend the school of his choice. Feeling that his entire future is in jeopardy, Mark takes the matter to court, charging that his right to due process has been violated. If you were the judge, how would you decide? Are students entitled to due process protections in the assignment of grades?

2. Carla Crane graduated from the Monroe City Schools. She was an average student, received average grades, and never had a serious discipline or attendance problem. On many occasions Carla's parents were told that her academic performance was satisfactory and that she needed no special or remedial instruction.

   Unfortunately, Carla found that she could not get a job. When her parents had her tested by a team of educational specialists, it was discovered that Carla was a functional illiterate. She could only read and write at the fourth-grade level. Given special tutoring by these specialists, her performance improved considerably within only a few months.

   Carla and her parents believe that school authorities have been negligent. They sue the school for failing to use reasonable care in providing Carla with adequate instruction, guidance, and supervision. If you were the judge, how would you decide? Is the school system liable for damages?

3. Cary McDonald and Charles Young are seventh-grade students at Buchanan Junior High School. They are upset with a Board of Education decision which removed several controversial novels from the reading list in their English course. The Board decision not only removed the books from the list, it also forbade teachers from accepting any of the books for academic credit. Cary and Charles argue that their right to academic freedom has been violated. They take this matter to court. If you were the judge, how would you decide? Do students have a right to academic freedom?

Procedures:

1. Divide the class into groups of three. Give each group one of the situations above.
2. Ask students to pretend that they are judges on the federal court of appeals. Instruct them to read the facts of the case assigned to them and to reach a decision. Indicate that they should

provide written reasons for their decisions.

3. When students have reached their decisions, have student "courts" report the results of their deliberations to the class. Compare and contrast decisions and reasons for those decisions.
4. Encourage students to suggest possible consequences of those decisions (e.g., What limits, if any, would they establish? What effect would the decision have on teachers and students?)
5. Reassemble students into groups of three. Have each group write at least one hypothetical case involving a possible student rights issue in need of clarification (e.g., locker searches, rights of elementary students, etc.) Discuss student responses.

7.

Issue Seven

What Obligations Do Students Have?

Many educators stress the importance of student responsibilities and bemoan their lack of acceptance. Seldom, however, do educators provide opportunities for students to discuss these responsibilities. The exercise below suggests one way this might be accomplished. The items are based upon the 1974 NCSS Position Statement on Student Rights and Responsibilities. (See *Social Education*, April, 1975, pp. 241-45.)

Sample Lesson Seven

Topic: How Important a Responsibility?
Strategy: Rating Scale
Directions: Listed below are a number of different responsibilities that students are said to have. Indicate the importance of each by circling the appropriate number on a five-point rating scale, where 1 = Important and 5 = Not Important.

1 2 3 4 5 A. To attend school regularly.
1 2 3 4 5 B. To take care of school property.
1 2 3 4 5 C. To conform to school rules and regulations.
1 2 3 4 5 D. To accept the consequences of one's own behavior.
1 2 3 4 5 E. To volunteer information to school officials upon request.
1 2 3 4 5 F. To refrain from interfering with the education of other students.
1 2 3 4 5 G. To be courteous to school officials and fellow students.
1 2 3 4 5 H. To do one's school work conscientiously.
1 2 3 4 5 I. To avoid encouraging other students to engage in inappropriate behavior.
1 2 3 4 5 J. To respect the opinions and ideas of others.

Procedures:

1. Distribute a copy of the exercise to students and clarify directions for its completion.
2. Tally and then discuss student responses. Encourage students to suggest other responsibilities they might have.
3. Discuss such questions as: (a) what is the relationship between student rights and responsibilities? (b) Should rights and responsibilities vary with age—e.g. should they be the same for primary students as for high school students? (c) How are responsibilities determined?
4. Use this exercise to help students assess the degree to which they meet their responsibilities. Suggest the exercise be titled, "How Responsible Am I?" and the rating scale be changed to 1 = Always and 5 = Never. In order to respect student privacy do not collect or tally student responses.

"He says he doesn't know how long she's been missing, but it was sometime after football season started."

A Few Last Thoughts

Will teaching about student rights and responsibilities be as predictable as teaching about the Smoot-Hawley Tariff? Probably not, but it will be a great deal more lively. Your students will probably be truly interested in the topic, and they (and you) will have a lot more fun with it than with Smoot and his cohorts.

You can probably defuse any potential controversy by following a few common sense rules. Don't let yourself be perceived as an advocate of student rights (or of administrative control, for that matter). Make it clear that you're teaching about student rights *and* responsibilities. Your job is to raise these issues to clarify students' thinking, not to lead them to the barricades. Make sure all sides have a chance to be heard, including the school administration.

The subject is so compelling, the learning opportunities so numerous, that teaching about student rights and responsibilities can surely be justified as part of your professional duty. And if you're professional about how you go about it, you should have clear sailing. □

CRIMINAL LAW

TITLE: From Arrest to Sentencing: The Criminal Law Process
CATEGORY: Criminal Law
DESCRIPTION: This article, written especially for Perspectives presents a clear and informative, step-by-step narration of the criminal law process. It is included because it defines the Sixth Amendment process, an issue all citizens must actively defend.

AUTHOR: Jason D. Kogan, has been an Assistant U.S. Attorney for the District of Columbia for seven years and presently is working in the Supreme Court Felony trial division.
PUBLISHER: PERSPECTIVES 1981. Edited by Bruce N. Jentleson and Frederick W. Mayer. CLOSE-UP Foundation, 1055 Thomas Jefferson St., N.W., Washington, D.C., 20007. Reprinted with permission.

TO THE TEACHER:

This article can serve as background material for the teacher and/or the student. Readers may wish to outline the points covered by Kogan in his article.

FROM ARREST TO SENTENCING: THE CRIMINAL LAW PROCESS

Jason D. Kogan

Jason Kogan has been an assistant United States attorney for the District of Columbia for seven years. Presently, he is working in The Superior Court felony trial division, but he also has tried cases in the misdemeanor, appellate and grand jury divisions. In this article written especially for PERSPECTIVES, he presents you with a clear and informative, step-by-step narration of the criminal law process.

"Stop! Police! You are under arrest!" These well-known words may be uttered during an exciting chase sequence on your favorite television series. But these words are all too familiar to the person arrested as the suspected perpetrator of a criminal offense. Once a person is arrested, he enters into the criminal justice system.

ARREST: A restraint on the individual's personal freedom is the initial and most obvious result of being arrested. Handcuffs may be placed on the hands to limit their movement. The police "pat down" the person's outer garments to determine if he is carrying a weapon, and he is allowed to move physically only when thepolice permit it. If the person is arrested in a car which is needed as evidence, it will also be seized.

After he is arrested by the police, the accused becomes cloaked with certain constitutional rights. First and foremost, the arrestee must be advised of his rights:

You are under arrest.

You have the right to remain silent. You are not required to say anything to us at any time or to answer any questions. Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we question you and to have him with you during questioning.

If you cannot afford a lawyer and want one, a lawyer will be provided for you.

If you want to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering until you talk with a lawyer.

The arrestee may voluntarily waive his rights and speak to the police if he so desires.

INTERROGATION: From the scene of the arrest, the individual is transported to the police station to be processed. The arresting officer prepares a report on the crime with which the person is charged. He also attempts to obtain background information on the arrestee. Fingerprints are taken and compared with any that may have been lifted from the scene of the crime. These fingerprints are maintained in police files for future identification purposes. If the arrestee's clothing is needed as evidence, it will be removed by the police and replaced with jail-type or other available clothing. A Polaroid photograph of the suspect, or a "mug-shot" photograph (a two-part photograph consisting of a front view and a side view of the face) are taken. This photograph, along with photographs of other similar-looking individuals, may be displayed to the victims of, or witnesses to, the present offense, or to victims of, or witnesses to, future criminal offenses.

Depending upon the type of the crime committed and the nature of the evidence in the case, further demands may be made on the physical being of the arrestee. A judge can order the individual to provide police with a sample of his blood, with head and pubic hairs, and with handwriting, printing or voice samples. The arrestee may be ordered to submit to the removal of a bullet from underneath his skin or to the taking of a model of his teeth. Probably one of the most common demands made upon an arrestee is that he be required to stand in a lineup to be viewed by the victims of, or witnesses to, the crime.

COURT PROCEEDINGS: PRELIMINARY HEARING, GRAND JURY: Within a reasonable time after the arrest, the person must be brought before a judge or magistrate and a formal complaint filed. At this point, the arrested individual becomes known officially as the defendant. The judge or majistrate again advises the defendant of his rights and determines whether or not he should be released on bond or detained in jail pending future court proceedings. A lawyer must be appointed for the defendant if he cannot afford one.

If the defendant is charged with committing a felony (any crime which carries a possible sentence of more than one year in prison) his next court appearance is at a preliminary hearing. At the preliminary hearing, the government is required to present evidence which shows "probable cause" to believe that a crime was committed and that the defendant committed the crime. Should the judge or magistrate find

probable cause, the case is forwarded to the grand jury for its consideration. The complaint against the defendant is dismissed if no probable cause is found.

A grand jury is composed of citizens from the community who must decide whether probable cause exists to believe a crime was committed and that the defendant committed the crime. However, unlike the preliminary hearing, neither the judge, magistrate, defendant nor his lawyer are present when the prosecutor presents the evidence to the grand jury. Grand jury proceedings are secret and not open to the public. In some jurisdictions court reporters may be present in the grand jury to record the testimony of the witnesses. The defendant may, if he wishes appear as a witness before the grand jury. Of course, the defendant cannot be forced to testify before the grand jury because he has the right not to incriminate himself.

After hearing the evidence, the grand jury may, by a majority vote, return an indictment against the defendant. An indictment is a legal document which provides the defendant with notice of all criminal offenses he is charged with committing. It calls upon him to stand trial for these offenses. If the grand jury does not vote to indict the defendant, the government cannot proceed any further against the defendant unless state law provides otherwise.

STILL IN COURT: ARRAIGNMENT, JURY SELECTION: Within about ten days after the defendant is indicted, he is arraigned before a judge. At the arraignment, the defendant must plead guilty or not guilty. A plea of guilty is an admission by the defendant that he committed the crime(s) charged in the indictment and makes a trial unnecessary. If the defendant pleads not guilty then he has the right to request a jury trial. In addition, the judge may amend the bond set previously or set bond if no bond was imposed earlier. An attorney will be appointed to represent the defendant if not done at any prior stage of the proceedings.

Before the start of the trial, which may be many months after the defendant's arrest, the judge rules on any legal issues raised by the defendant that might result in prohibiting the government from trying the defendant or from using certain evidence against him during the trial. For example, a defendant may claim that evidence was seized illegally from his home, that the indictment is defective, or that too much pre-trial publicity will interfere with his right to a fair trial. If the judge rules against the defendant, then the trial will begin.

Jury selection, commonly known as voir dire examination, commences with the questioning of a large number of prospective jurors concerning their possible prejudices for or against the government and for or against the defendant. Jurors who admittedly cannot be fair to one side or the other, or who have specific reasons for being unable to sit on a case, will be dismissed (called "stricken for cause") by the judge. Both the government and the defendant have a specified number of pre-emptory challenges (the right to eliminate a prospective juror for any reason whatsoever). A final panel of twelve jurors is selected to hear the case.

THE TRIAL, THE VERDICT AND THE SENTENCE: Once the jury is chosen and sworn under oath, the prosecutor makes an opening statement to the jury in which

he outlines the government's case against the accused. The defense attorney may, if he desires, also make an opening statement to the jury. Since the prosecution has the burden of proving the defendant guilty beyond a reasonable doubt, it must present its witnesses and supporting physical evidence to the jury. The defendant has a right to cross-examine each government witness. After the prosecution concludes its case, the defendant has an opportunity, if he wishes, to take the witness stand in his own behalf or to present any other relevant evidence. The defendant cannot be forced to testify if he does not want to do so.

At the conclusion of all the testimony, both the prosecutor and the defense attorney give a closing argument to the jury. During the closing argument, the prosecutor argues to the jury all the reasons why it should find the defendant guilty. The defense attorney argues to the jury all the reasons why it should acquit the defendant. When these arguments have been completed, the judge instructs the jury on the legal principles to which it must be bound in deciding the facts of the case. The jury then retires to deliberate its verdict.

A guilty verdict or a plea of guilty leads to the final stage -- sentencing. Among the many factors which a judge may consider in determining the sentence to be imposed on the defendant are: (1) nature of the offense, (2) possible penalties, (3) prior criminal record, (4) age of the defendant, (5) employment history, (6) family background, (7) educational background, and (8) comments from family members, friends, and people in the community. The defendant also has the opportunity to speak for himself at the sentence hearing. Then the defendant stands nervously awaiting the sentence.

"WHEN JUDGES DO NOT AGREE, IT IS A SIGN THAT THEY ARE DEALING WITH PROBLEMS ON WHICH SOCIETY ITSELF IS DIVIDED."

Justice William O. Douglas

TITLE: Values Clarification Strategy
CATEGORY: Criminal Law
AUTHOR/EDITOR: Adapted from: Simon, Sidney B., Howe, Leland W. & Kirschenbaum, Howard. Values Clarification.
PUBLISHER: Hart Publishing Company, Inc., New York, 1972.
SCHOOL SYSTEM: DeKalb County Schools

TO TEACHER:

The purpose of this strategy is aimed at helping students see the wide range of possible positions on any given issue.

Break the class into groups of five or six. Let each group choose or have the teacher assign a controversial issue. Some related to criminology are:

Death Penalty	Legalized Prostitution
Welfare Fraud	Drug Pushing
Child Abusers	Gambling
Curfew for Juveniles	Runaways

Now, have the group identify five or six possible positions on their issue. The authors suggest that "the students might identify an ultra-conservative stand, a conservative stand, a moderate stand, a liberal stand, a radical stand, and a revolutionary stand". The students each take one of these positions and write a paragraph defending it. Members thinking of other positions may write more than one statement each to cover all of these positions.

Once this procedure is completed, members of the group reveal their own position and discuss the issue. The authors write that "if all the groups in the class are working on the same issue, each group's continuum is displayed for all to see and a class discussion may follow".

Other variations include having each group member select the position closest to his own and rewrite or add to the paragraph so that it expresses his own viewpoint. This could then be dittoed and handed out to the class for further discussion. One more variation is to "have spreads of opinion of all the groups on all the issues posted on the walls; the class can walk around the room viewing each group's work. Then, each member of the class may be given a chance to state aloud his own position on any of the issues".

Teachers can invent their own ideas on how to use this strategy.

TITLE: A Future Without Violence
CATEGORY: Criminal Law
DESCRIPTION: Students make projections based on evidence collected and examined in classroom procedures and become more sensitive to many-faceted societal problems. 8-12
AUTHOR/EDITOR: J. Nalburn
PUBLISHER/SCHOOL DISTRICT: DeKalb County Schools- Used with permission.

TO TEACHER:

Explain to students: "Pretend that you live 300 years in the future. All violent behavior has been eliminated from your society because the causes of violence have been identified and dealt with effectively.

Instructions:

Step 1: Working in small groups of four to six students, examine the following causes of crime that were discovered and eliminated by your future society.

Step 2: After discussion and debate, your group should rank-order the causes assigning the Number One to the most important cause, the Number Two to the second most important cause, and so on until the ranking is completed. A majority must agree before a small group decision can be made.

Step 3: Each small group should choose a person to record the ranking.

Step 4: The entire class should discuss and compare the various rankings after each small group has completed step number three.

POSSIBLE CAUSES OF CRIME THAT MAY BE CONSIDERED:

Television Violence
Racial Discrimination
Poverty
Athletic Violence
Movie Violence
Unrestricted Gun Sales
Other causes you can think of

TITLE: Values Continuum
CATEGORY: Criminal Law
DESCRIPTION: Students become aware of what is involved in arriving at a consensus on an issue and of the factual evidence available to support a variety of positions. 8-12
AUTHOR/EDITOR: D. Smith
PUBLISHER/SCHOOL DISTRICT: DeKalb County Workshop, 1978. Used with permission.

TO TEACHERS:

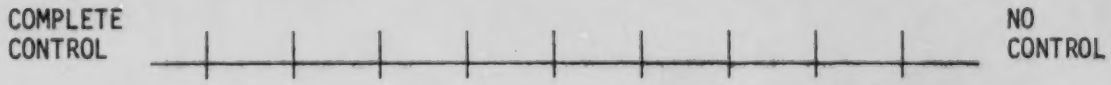
Purpose

The values continuum serves to open up the range of alternatives possible on any given issue. Students begin to realize that on most issues there are many shades of gray; and, they are more likely to move away from the either-or, right-wrong thinking which often occurs when controversial issues are discussed in class. The continuum also encourages students to make a public affirmation of their opinions and beliefs. Do not accept any opinion that cannot be substantiated with factual evidence. This offers excellent opportunity to analyze prejudicial thinking, stereotyping, etc.

Procedure

An issue is identified by either the teacher or the class. This issue may have presented itself during a class discussion or it may have been prepared beforehand by the teacher. An example is the issue of government economic controls -- often thought of as socialism vs. capitalism.

The teacher draws a long line on the board and with the class, determines two polar positions on the issue. For example, one end position might be: "Complete government control over economic affairs", and the other end position might be: "Absolutely no government regulation of the economic system". The two positions are placed on the opposite ends of the line, as shown:



The teacher then marks a series of points along the continuum saying, "Between these end-points, there are numerous other positions. I ask each of you to tell me where you stand on this issue. Briefly describe your position, without giving your reasons for holding that position. Tell me how much control you think is desirable and indicate where along the continuum you want to place yourself. Later you can share your reasons for your decision. You may pass if you wish."

Students place their names on the line and briefly tell what their placement stands for. If five to ten students respond, this is usually enough to get a spread of opinion and to give everyone time to determine his own position. After each student has considered the issue for himself, a discussion can begin.

Additional Issues

1. How much personal freedom do you have?
2. How much freedom do you want?
3. How do you feel about fighting?
4. How do you feel about divorce?
5. How do you feel about integration?
6. How do you feel about the draft?
7. How do you feel about gun control?
8. How do you feel about abortion?

TITLE: Police Work and Police Officer -- A Guest Speaker
CATEGORY: Criminal Law
DESCRIPTION: A homework assignment to precede classroom conference with a police officer or sheriff. If officer is not available, arrange for a committee to make an appointment with representative of Police Headquarters to interview on questions that were raised in class analysis of T.V. observations.
AUTHOR/EDITOR:
PUBLISHER/SCHOOL DISTRICT: "Society and the Law", DeKalb County Schools, 1979, pages 13 and 21. 8-12 Printed with permission.

TO THE TEACHER:

Discuss with the students the various police programs on T.V. Bring a T.V. guide or Saturday newspaper in order to inform the students of the exact times these programs can be seen. Then, as homework assignment, ask the students to view on of these programs and complete the "Student T.V. Analysis" Questionnaire (See Page 132).

After all students have watched a police T.V. program, have them discuss the answers to these questions in class. Have a police officer present, either at this discussion or soon after it, in order to get the police officer's viewpoint. This will allow the students to compare their personal views with the T.V. image and the officer's personal opinion.

Prior to the Police Officer's visit to class, the teacher should brief the officer on the purpose of the visit, the characteristics of the students, what information on law enforcement has already been covered, and the instructions given to the students in preparation for the visit. It is usually helpful for the students to write questions for the speaker in advance. At the conclusion of the visit (preferably the next day), the teacher might ask the students the following questions:

POSSIBLE QUESTIONS FOR DISCUSSION AFTER POLICE OFFICER'S VISIT/ INTERVIEW:

1. What was the most important thing you learned from the police officer?
2. How do you think the officer felt about the conference with the class?
3. Did the police officer reinforce or change any attitudes you previously had about the police? How and why?
4. What changes, if any, would you recommend to improve the public's understanding of law enforcement officers and what would be the consequences of each?

STUDENT WORK SHEET
STUDENT TELEVISION ANALYSIS
POLICE WORK

1. Did the police officer in this program satisfy your expectations of the role of a policeman? YES___ NO___ How and Why:

2. List the specific activities that the police officer participated in during the television program. What aspects of his/her job do you feel were the most and least realistic in portraying an officer's typical day?

ACTIVITY	MOST	LEAST

3. With what parts of the television police officer's role did you disagree?

4. How would you describe the typical day in the life of a police officer?

5. What training and education must one acquire to become a police officer?

6. Why must the officer continue to study and learn new information?

TITLE: The Punishment Should Fit the Crime
CATEGORY: Criminal Law
DESCRIPTION: Simulated decision-making exercises to emphasize the procedures and the alternatives available to a Judge in determining sentences of convicted defendants. This is most suitable as a final activity and is not recommended as an introductory exercise. 8-12
AUTHOR/EDITOR: John Evans, Chairman, Law-Related Education, Editor Middle School Law-Related Education, Atlanta Public Schools, 1980, pages 88-91; 94-95; 98-99; 101-104; 108-109.

TO TEACHER:

DIRECTIONS FOR INDIVIDUAL ASSIGNMENTS

1. Student should be issued cases and sentencing form one at a time. Teacher may not wish to use all ten of the cases. When the first case is completed, the second case is issued and so on. It would be most helpful to the student for the teacher to critique first effort.

2. When the assignments are completed, students could present their sentences for various cases to the class and the class could collectively evaluate them; or

3. Class could construct a chart of the sentences for the assigned cases to determine consensus, variances, and such from the cases; and

4. Class (or individual) could defend reasons for imposing the particular sentence.

DIRECTIONS FOR SIMULATION/ROLE-PLAYING EXPERIENCE

Divide the class equally into four groups. Each group will have a specific task to complete. The groups and their tasks are:

1. **Judge**—to conduct the sentencing hearing and, at its conclusion, pronounce the court's sentence. Note steps 1, 5, and 6 in **Steps in Sentencing Procedure.**

2. **Probation Officer**—to recommend to the judge the sentence for the convictions in the case. Note step 2 in **Steps in Sentencing Procedure.**

3. **District Attorney**—agrees with or argues against probation officer's recommendation and may present own sentencing recommendation. Note step 3 in **Steps in Sentencing Procedure.**

4. **Defense Attorney**—agrees with or argues against probation officer's recommendation and may present own sentencing recommendation. Note step 4 in **Steps in Sentencing Procedure.**

A fifth individual might be present—the convicted defendant. If so, defendant should be present but not participate in the hearing.

Student Instructions

Exercises in Sentencing – The Punishment Should Fit the Crime

Introduction:

These exercises begin *after* the trial has been completed. The *defendant* has been found *guilty*. It is now the responsibility of you, as the trial judge, to set the sentence for the convicted.

The sentence you set must be within the limits of the law, must be fair and equitable. As judge, you cannot "make up" a sentence. You must be guided by the limits of the law.

General Procedure of a Sentencing Hearing:

After the defendant has been tried and found guilty of a crime or crimes, the judge faces the most difficult task of all—deciding what the sentence of the convicted should be.

Many factors go into making that decision including: (1) the past history of the convicted person, (2) his/her attitude about the crime of which he/she has been convicted and (3) what seems to be in the best interests of society.

In making the decision, the judge usually asks the probation department of the court to present a report about the convicted and recommend a sentence. In addition, the defense lawyer and the prosecutor are given a chance to argue for or against the recommendation of the probation department or to present their own recommendations.

Steps in Sentencing Procedure:

1. The judge usually opens the hearing by summarizing the case and the verdict.
2. The judge then calls on the probation officer to give the sentence recommendation. Although the probation officer represents the state, the officer is usually more sympathetic toward the convicted than the prosecutor.
3. The prosecutor then presents arguments or recommendations for the sentence. Usually the prosecutor recommends the strongest sentence.
4. The defense lawyer presents arguments or recommendations for sentence. Usually the lightest sentence is recommended.
5. The judge may direct questions at any of the above persons as well as the convicted. The judge may allow these above persons—convicted excluded—to argue the sentence among themselves
6. The judge, and the judge alone, makes the sentencing decision.

7. **Informal Probation**

Exactly the same as Formal Probation except that the convicted is not under the supervision of a probation officer, but on his/her own to conduct himself/herself within the limits of the conditions of probation.

8. **Suspended Sentence**

Here the court will sentence the convicted to a specific term in State Prison and then suspend the sentence on the condition that the convicted does not violate any of the conditions set forth by the court regarding the conduct of the convicted. Should the convicted violate any of the conditions, he is brought back into court and the full sentence in State Prison is imposed.

9. **Combination of the Above Choices**

A court may combine any of the above choices in a logical manner, and in any way it deems best for the interest of society. If you use any combinations, be specific and careful in writing out the sentence.

10. **Death Penalty**

If the defendant has been convicted of a capital offense, the court may sentence him to death.

Some suggestions which may help—

1. In imposing sentences, you must be specific as to the number of years. For example, you sentence to 78 years in prison and do not sentence to less than 50 nor more than 99 years.

2. In several of the cases you will deal with, the person will have been convicted of more than one crime. When this happens, you must sentence the convicted for each crime. When sentencing for more than one crime, you can give either: *consecutive sentences*—sentences to be served one after another or *concurrent sentences*—sentences to be served at the same time.

CASE STUDIES FOR SIMULATION ACTIVITY AND SENTENCING FORMS:

Sentencing Choices:

1. **State Prison**

   To be sentenced to State Prison, the convicted must be 18 years of age or older. (Convicted could be less than 18–if tried as an adult.) Convicted would have to be sentenced to serve a term of more than one year. Convicted could be sentenced to serve time in a minimum, medium or maximum security prison.

2. **County Jail**

   Convicted can be sentenced to the County Jail for any term up to one year.

3. **Youth Training School**

   Convicted, up to the age of 25, could be sentenced to the Youth Training School for *first* felony conviction only. Convicted is sent here for a specific term. The actual length of the term is decided by the Youth Advisory Parole Board. This board may parole the convicted when they feel convicted is ready to return to society or recommend release when the specific term is completed.

4. **Fine**

   For many convictions the convicted's punishment can be a fine. If the punishment is a fine, that fine must be paid at the time it is set and never on the installment plan.

5. **State Mental Institution**

   If the convicted is judged insane, or if convicted of certain sex offenses or narcotics addictions, he/she can be confined to the State Mental Institution. Commitment here is reviewed once a year, when the case and the mental state of the convicted is reviewed by the Mental Institution Board releases the convict from the institution or commits for another year. There is no limit to the number of years the convict can be "recommitted."

6. **Formal Probation**

   A prison sentence for a specific number of years is set by the court but rather than the convict serving the sentence in prison, the sentence is probated. This means that the sentence is served outside of prison on the conditions set forth by the court. In Formal Probation, the convicted is supervised by a probation officer to whom the convicted must report at regular intervals. Should the convicted violate any of the conditions to which he/she has agreed, then the convicted is brought back into court the probation is revoked and the convict is sent to State Prison to serve the remainder of the sentence.

CASES FOR SENTENCING DECISION AND FINAL SENTENCING FORMS: *

Module No. 6 –

Student Material

CASE 2

Name: **Allen Jacobs** **Age: 22**

Background:

Allen Jacobs is the oldest of six children. His family life is very unstable due to his father's alcoholism and gambling. His parents were divorced five years ago. Jacobs dropped out of high school before completing the 11th grade due to failing grades and chronic truancy. He has an average I.Q. The few unskilled jobs Jacobs has had did not last long due to his numerous arrests.

Prior Record:

Age	Arrest Record	Action by Juvenile Authorities
17	possession of dangerous drugs	informal probation
18	under the influence of dangerous drugs	counseled and released
18	drug intoxication in public	juvenile camp–one month
		Action by Adult Authorities
18	drunk in public	county jail–five days
19	possession of marijuana	county jail–180 days; sentence suspended; three years probation
19	breaking and entering	county jail–thirty days plus one year probation
19	battery on a police officer	county jail 120 days
20	grand theft–auto, hit and run while under the influence of drugs	committed to Youth Training School; paroled after 14 months

Current Case:

Three months after his release from the Youth Training School, Jacobs was arrested for armed robbery of an automobile. Jacobs pleaded guilty to the robbery charge stating that he took the car because, "I needed a ride home." However, he said that he never had a gun, as claimed by the victim. Jacobs stated that he pointed his index finger inside his jacket so that it looked as if he had a gun. No gun was found by the police when Jacobs was arrested.

* There are 10 cases in the original. Only cases 2, 4, 6, 7, and 8 are included.

Case No. 2 (continued)

Verdict:

The jury found Jacobs guilty of armed robbery of an automobile, a felony.

Limits of Punishment:

Upon conviction of armed robbery, the convict shall be sentenced to not less than five years nor more than thirty years in State Prison.

Module No. 6

Student Material

Case: 4

Name: Rodney Baker **Age: 17**

Background:

Rodney Baker has a long history of unstable behavior. At birth it was reported that he had possible brain damage. He was a behavior problem at home and then in school from the age of three on. Baker never knew his father who had been sent to state prison for a narcotics offense before Baker was born. His father eventually died in prison. Another man lived off and on with his mother in a common-law relationship. Although Baker has a normal I.Q., his school record shows failing grades, disobedience, truancy and rejection by his peers. At the age of nine, a psychiatrist classified him as "emotionally unstable with a minor brain disfunction resulting in rebelliousness, anti-social behavior and attention seeking." Baker has spent many years in different institutions because of his unstable behavior and delinquency. At the age of 15, a psychologist reported, "Rodney's personality growth is typical of what one sees in many boys who have spent a good deal of time in an institutional setting where they have not been given the warmth, stimulation or identity that is part of a normal, healthy home and family setting."

Prior Record:

Age	Arrest Record	Action by Juvenile Authorities
8	petty theft, runaway and incorrigibility	counseled and released to mother
9	burglary	placed in a home for disturbed boys; attended several different such homes from 9-15; expelled from one home at age 15 after hitting another boy in the face with a rock; placed in a juvenile camp

15	camp runaway	Youth Authority School; several fights with other boys; released on parole to mother; refused to obey mother at home
16	grand theft—auto	parole revoked; released in mother's custody pending hearing on grand theft—auto charge

Current Case:

While awaiting his juvenile court hearing for the grand theft—auto charge, Baker at age 16, robbed and murdered a 21-year old liquor store delivery clerk. Following is Baker's voluntary confession to the police:

"At 1:30 today, I called up Bill's Liquor Store and I told him I wanted to order a case of Colt 45 beer. They said they were going to bring it right now. I was in the bedroom talking to some girl. I already had the knife with be because I planned to rob the guy when he got there. When the delivery boy brought the beer, I went into the front room and saw the case of beer being put on the table. I got the knife out and put it around his neck and threw him on the floor and told him, 'It's a holdup.' He just kept saying, 'Don't.' I just kept stabbing. I don't remember how many times. He kept giving me a hassel and finally he settled down and he just lay there. I dragged him through the bedroom and down the back stairs. I threw him over the fence into the next yard. I went back into the bedroom and drank a couple of the beers. Then I went to the high school and visited some of my friends. I then went to the playground and shot basketball for an hour or so. When I was stabbing him, my hand kept slipping down the blade of the knife and that's how I cut my hand."

Verdict:

Baker turned 17 shortly after he was arrested for murder and armed robbery. A petition was filed in juvenile court to try him as an adult. After nearly a year's time—during which Baker was held in several different detention facilities—the petition to try him as an adult was approved. Baker pleaded guilty to first degree murder and guilty to armed robbery. Baker was found guilty of first degree murder and armed robbery. Baker was 17 when his trial was completed.

Limits of Punishment:

Upon conviction of first degree murder, the convicted shall be punished by death or not less than thirty years nor more than a life sentence in state prison. Upon conviction of armed robbery, the convicted shall be sentenced to not less than five nor more than thirty years in state prison.

Module No. 6 -

Student Material

Case: 6

Name: Karol Klung **Age: 22**

Background:

Karol Klung is one of three children from a stable family. She graduated from high school and attended college at night for three years. Her I.Q. is above average. Klung is not married. For the past four years she has worked as a secretary at several local businesses.

Prior Record:

Age	Arrest Record	Action by Juvenile Authorities
15	loitering	warned and released
16	speeding	fined $30
16	following too close—accident	fined $75
17	Speeding	case dismissed
18	failure to yield—accident	fined $50
20	disturbing the peace	case dismissed; lack of evidence
20	reckless driving and speeding	fined $75 plus 1 year probation
20	speeding	fined $50
21	speeding	fined $200; operator's license revoked for 12 months

Current Case:

Klung was operating her car on the wrong side of the expressway and collided with another car head-on—killing the operator and injuring three passengers of the second car. Klung was estimated to have been traveling at 80 miles per hour at the time of the collision.

Verdict:

Karol Klung pleaded not guilty to the charge of voluntary manslaughter. A jury found her guilty of voluntary manslaughter.

Limits of Punishment:

Upon conviction of voluntary manslaughter, the convicted shall be sentenced to not less than four years nor more than twenty years in state prison.

Module No. 6 --

Student Material

Case: 7

Name: Robert Thorn Age: 34

Background:

Robert Thron is a college graduate. Thorn has been married for the past thirteen years and has two children, ages 9 and 5. He has been employed by the Meek Finance Company for the past ten years as a branch office manager.

Prior Record:

None.

Current Case:

Robert Thron was arrested on the basis of a complaint made by the Meek Finance Company charging that Thorn had embezzled $2,000 from the company.

Verdict:

Thorn pleaded guilty to the charge of embezzlement.

Limits of Punishment:

Upon conviction of embezzlement the convicted shall be sentenced to not less than two years nor more than ten years in state prison.

Module No. 6 -

Student Material

Case: 8

Name: John Berry **Age: 22**

Background:

John Berry lives with his parents and two brothers. The family has been lifelong residents of this city. Berry completed the 11th grade of school. His high school record indicates that he was indifferent toward school as shown by the many failing grades and poor attendance records. He was on several occasions suspended from school for fighting. He has an average I.Q. He has held several auto mechanic related jobs and has been at his current job for the past six months.

Prior Record:

Age	Arrest Record	Action by Adult Authorities
17	fighting	fined $30
17	petty theft	probation—one year
18	fighting	released—victim refused to testify
20	burglary	3 years—state prison; paroled after serving one year

Current Case:

John Berry was arrested for armed robbery and murder at his home. Berry was on parole at the time of his arrest. He was wounded by an officer's gunshot during the arrest. Berry was identified by two eyewitnesses of the robbery and murder.

Verdict:

John Berry pleaded not guilty to both armed robbery and murder. The jury found him guilty on both counts.

Limits of Punishment:

Upon completion of armed robbery, the convict shall be sentenced to state prison for not less than five years nor more than thirty years; upon conviction of murder the convict shall be sentenced either to execution or life in state prison.

Module No. 6 --

Student Material

SENTENCING FORM

CASE: State v. _____ CASE NO. _____

The defendant, _____

(having plead), (been found) guilty, of the following offense(s), _____

_____

_____

The following sentence(s) is imposed: _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

This the _____ day of _____ in the year _____.

This sentence is imposed by the authority of _____.

Judge
Podunk Superior Court

Module No. 6 --

Student Material

ORDER OF: PROBATION – / – SUSPENDED SENTENCE

STATE v. _____ CASE NO. _____

_____

_____

and has been sentenced to serve _____ years in state prison.

The court, having examined the cause, it is ordered, adjudged and decreed that said defendant serve _____ years in prison with the remainder of his sentence, _____ years, (probated) (suspended).

It is the order of this court that the defendant comply with all the following conditions:

_____

_____

_____

_____

_____

_____

_____

IT IS FURTHER ORDERED THAT IF THE DEFENDANT IS IN VIOLATION OF ANY OF THE FOREGOING CONDITIONS: HE IS TO BE BROUGHT BEFORE THIS COURT TO BE DEALT WITH ACCORDING TO LAW.

This the _____ day of _____ , 19__ .

This certifies that I completely understand the meaning of this order and its conditions and I agree to them.

_____

Signature of Defendant / Date

BY ORDER OF:

_____, Judge

Podunk Superior Court

TITLE: Plea Bargaining -- The Decision Is Yours
CATEGORY: Criminal Justice
DESCRIPTION: A moral dilemma exercise in plea bargaining and sentencing.
SOURCE: Unknown

TO THE TEACHER:

Plea bargaining occurs when a defendant decides to "bargain" with the prosecutor rather than risk the outcome of a jury trial. This can save time and money for the defendant and the taxpayer. Usually in exchange for cooperating, the defendant is allowed to plead guilty to a lesser charge than that of the actual crime (for example: manslaughter rather than murder). The prosecutor must consider many things in reaching a compromise with the defendant. These include the severity of the crime, justice for the victim and a fair punishment for the accused.

INSTRUCTIONS:

Students could be organized in groups or the facts could be given to each student.

After groups or individual's reports on sentencing are given, follow with class discussion.

Suggested concepts to analyze include:

A. Punishment as a deterrent.
B. Punishment as retribution.
C. Punishment as rehabilitation.
D. Punishment as isolation.

FOR THE STUDENT:

A CASE OF PLEA BARGAINING - THE DECISION IS YOURS

THE FACTS:

Larry Landon was a popular, bright, attractive sixteen year old. He was known for his sharp clothes and red Corvette. Larry was a big spender and enjoyed treating friends to hamburgers and cokes. He indulged his many girlfriends with expensive dates and presents. His wealthy father always picked up the tab.

Adam Rigdo was a smaller than average seventeen year old, the youngest of eight children. His parents were dead. He lived with a sister, her husband, and their three children in a two-bedroom trailer.

Working after school at a local fast food restaurant, Adam was able to make enough money to pay $25.00 per week room and board to his sister. After six months, he had saved enough money to purchase a used motorcycle so he would have transportation to and from work. One afternoon, Adam parked his motorcycle outside of the restaurant by a speed break. During the evening, Larry Landon raced through the drive so fast that when he hit the speed break, his car momentarily went out of control crushing Adam's motorcycle. He then drove off without mentioning the damage to Adam.

Several witnesses ran into the restaurant and told Adam about the incident.

Later, Larry returned to the restaurant. Adam asked him to pay for the motorcycle. Larry laughed at him and refused to pay. Over a period of several weeks, Adam repeatedly asked Larry for the money. One evening Adam encountered Larry outside the restaurant. Larry made ugly remarks to Adam. Adam ran into the restaurant, grabbed the owner's gun and killed Larry.

YOU are the prosecuting attorney. Under the advise of his lawyer, Adam has entered a plea of guilty and says he does not want to go to trial. The judge has assigned you the task of determining a fair sentence. What will it be?

Before making a decision, answer this question. "What is the purpose of punishment in our society?" Substantiate your answer and design your sentencing according to your belief.

This activity will be followed by a class discussion. You will be asked to discuss your individual decision in light of your beliefs about the purpose of punishment.

TITLE: THE CASE OF THE SPELUNCEAN EXPLORERS
CATEGORY: Criminal Justice
AUTHOR/EDITOR: Professor Lon Fuller, Editor
PUBLISHER/SCHOOL DISTRICT: Adapted from 62 Harvard Law Review 616 (1949). DeKalb County Schools, 1978. Used with permission.

TO THE TEACHER:

VALUES CLARIFICATION STRATEGY

Pass a copy of the following story to the students. This story is based on the hypothetical case by Professor Lon Fuller, "The Case of the Speluncean Explorers," 62 Harvard Law Review 616 (1949).

NOTES FOR USE IN A CLASSROOM

The teacher can walk around the class and get an idea of how the students are voting.

Divide the students into groups to serve as juries and have them reach a group decision. (Some groups may not be able to reach a verdict in the time allowed. Do not force a decision.) Work with either the groups or the class as a whole drawing out student's ideas and reasons.

Students may wish to consider some value issues related to this case:

1. What is the value of a professor to society versus a student?
2. What other alternatives could the group have used to survive?
3. What if one of the students had gotten the red M & M? Would your feelings about the case be different?

Natural law theories can be brought into discussion with advanced students. Students may wish to research maritime cases which are similar.

STUDENT MATERIAL

THE CASE OF THE SPELUNCEAN EXPLORERS

Three students and their geology professor were caving in North Georgia when the State Department of Transportation began blasting for a new highway. The blast triggered a cave-in trapping the four explorers in a five foot by five foot cavern with no exit except the way they came in.

Besides a degree in geology, the professor was also a math "wiz" and an economic genius who had a "sure-fire" plan to end inflation. He was to travel to Washington, D.C. via airplane to confer with the President that evening.

Following the cave-in, the professor calculated that there was just enough air left for four people to survive sixteen hours. He also carefully calculated that it would take seventeen hours before a rescue team would be able to reach them since they had contacted the local forest rangers and told them they would check back with the ranger station after leaving the cave. The time the group planned to be out passed; and, the rangers having been aware of the blasting in the area, called in a rescue team which immediately began work. At exactly sixteen hours since the mishap, the rescuers reached the cavers and found three students alive and well and a geologist's pick next to the professor's body. The professor's skull had three geologist-pick holes in it.

You are members of the jury who must decide the fate of the three students who have been charged with the purposeful and knowing murder of the professor.

The Judge charged you as follows:

"You have seen the evidence presented before this court and have heard the testimony. The criminal code of this state requires you to return a guilty verdict if you find, beyond a reasonable doubt, that the defendants knowingly, willfully, and purposefully murdered Dr. Hunter."

The State's statute would require the Judge on a verdict of guilty to sentence the defendants to either life imprisonment or death.

Now, write your verdict and give the reasons for deciding the way you did.

The evidence admitted into court is as follows:

All three students testified to the following facts which were supported by a handwritten contract proved by handwriting experts to be in the professor's own hand with the professor's signature and the proven signature of the students.

ITEM 1: "After the cave-in, the professor told us how much time we had and it was impossible for all of us to survive the full seventeen hours until we would be rescued. The professor said three could survive the full seventeen hours if one hour and fifteen minutes before seventeen hours were up, or fifteen and three-quarter hours since the cave in, one of us were to die. The professor said it was useless for us to all die when three of us could go on living. It was then that the professor came up with the idea that one of us offer himself or volunteer as a sacrifice so that three might live until we were rescued.

None of us wanted to be the sacrifice, so the professor suggested a game of chance, the loser being the one to die. We were against this idea because we were worried if we were rescued, we would be in a */&# --- lot of trouble if one of us were found dead. Then the professor said, 'Let's draw up a contract.' We voted on it and the vote was unanimous, so the professor wrote the contract and we all signed it.

After we had been in the cave fifteen and one-half hours according to the professor's Timex, we drew M & M's in the dark. When the flashlight was turned back on, the professor had the red one, which meant the professor was to be the one to die. At exactly fifteen and three-quarters hours since the cave-in, each of us took a swing at the professor's head."

ITEM 2: The pick was the murder weapon; and, any, all, or one of the blows could have been the fatal blow. The pick was the cause of death. Each of the defendant's fingerprints was on the handle.

ITEM 3: The contract was admitted into evidence only to back up the testimony of the defendants because one cannot make a valid contract to do an illegal act. The contract reads as follows:

We, the undersigned, in full consideration of the benefit of three of us surviving, rather than none survive this unfortunate accident of nature, do hereby contract and promise that after the fifteenth and one-half hour has passed will each draw an M & M candy, there being only three left, red, green, and brown, in the dark, and upon turning on the flashlight, the holder of the red M & M will freely give himself or herself in death so that the others may live until the rescue party arrives.

Should I be the one who selects the red M & M, I fully forgive and relieve from all liability the survivors, their heirs and assigns for eternity.

We enter into this contract freely and are of sound mind.

Signed this fourth day of May, 1981.

Dr. Rock Hunter
Bob Wire
Jim Nasium
Kitty Katz

ITEM 4: Experts proved Dr. Hunter's calculations to be correct as to the length of time four, as opposed to three, could survive. Dr. Hunter misjudged how quickly the Ranger's rescue team could work.

ITEM 5: The final cause of death was attributable to be from multiple geology-pick wounds to the head, each of which would have been fatal.

TITLE: Crime-Reporting Line: "A Girl is Murdered: Thirty-Eight People Watch"
CATEGORY: Criminal Law
DESCRIPTION: Students examine three personal attitudes on involvement in crime witnessing, reporting and procedures. 8-12
AUTHOR/EDITOR: M. Scott
PUBLISHER/SCHOOL DISTRICT: DeKalb County Workshop, 1978. Used with permission.

TO THE TEACHER:

Allow students to complete the questionnaire on Crime Reporting Line and related questions. They are not to submit the questionnaire or discuss their responses.

CRIME REPORTING LINE

1. Place a "Crime Line" on the chalkboard:

I would ALWAYS report a crime	I would NEVER report a crime

2. Students indicate on a sheet of paper their feelings about crime reporting and mark where they stand along the line.

3. Briefly, in writing, discuss the following questions:

   A. Would it make any difference if you knew the person committing the crime? Why?
   B. Would it make any difference if you knew the victim of the crime? Why?
   C. What are some of the reasons that people do not report crimes?

4. After completing the questionnaire, provide each student with a copy of the story entitled, "A Girl is Murdered: Thirty-Eight People Watch" and ask them to answer the questions at the end of the story. When completed, allow students to re-evaluate their initial responses on the crime reporting form. A small-group or class discussion may follow.

NAME:_____

DATE:_____PERIOD_____

A GIRL IS MURDERED:
THIRTY-EIGHT PEOPLE WATCH

DATE: March 13, 1964
TIME: About 3:20 AM
PLACE: Queens, a part of New York City

Catherine Genovese, age 28, was coming home from work. She parked her car about 100 feet from her apartment house. A man stood near the parking lot. Catherine was afraid. She walked toward a police call box. The man came up behind Catherine; he raised a knife and stabbed her. Catherine screamed, "Oh, my God, he stabbed me! Please help me! Please help me!"

A man threw open a window in an apartment house across the street. He called out, "Let that girl alone!"

Other windows were raised. The man who had stabbed Catherine got into his car and drove away. Then the windows were closed.

The man returned. He stabbed Catherine once more. Catherine cried out in agony. "I'm dying. Please, I'm dying."

Windows were opened. The man got into his car and drove away. Again, the windows were closed.

Catherine staggered to the back of an apartment building. A few minutes later, the man returned. He found Catherine lying at the foot of the stairs. He stabbed her a third time and killed her.

At about ten minutes to four that morning, the police got their first call from a man who had seen the murder. The police arrived in two minutes. It was hard for them to believe what had happened.

For more than 30 minutes, thirty-eight people had watched a woman being slowly murdered. Not one of the thirty-eight people tried to help Miss Genovese. Not one of the thirty-eight people even picked up the phone to call the police while she was alive.

Because the kilier had three chances to finish his job of murder, Catherine died. If the police had been called after the first attack, Catherine might still be alive now.

Reporters asked the thirty-eight people why they hadn't helped Catherine. What did they say?

"We were afraid to call the police," said one man and his wife.

"I don't know," a woman said.

"I didn't want to get involved," said another.

"Leave me alone," said still another.

At 4:25 AM, an ambulance came for the body.

The people came outside. Then the ambulance left. The watchers went back upstairs.

The story appeared in the newspapers. Readers could not believe what had happened. They asked, "Why didn't one of the thirty-eight people lift a phone to help the dying girl? Why did they close their windows?"

Many people tried to explain. Here are two explanations:

* George Serban, a psychiatrist, said: "People do nothing because they feel city life is unjust. They feel they will get hurt if they act. They feel that whatever they do, they will be the ones to suffer."

* A.M. Rosenthal, THE NEW YORK TIMES Editor, who wrote a book about the murder, said: "Everyone hunted for someone to blame. To my amazement, many people blamed the police; but, I began to believe that the target for blame was in our own mirrors."

WHAT DO YOU THINK?
WHO IS TO BLAME?
WHAT WOULD YOU HAVE DONE IF YOU HAD BEEN ONE OF THE WITNESSES?

Before deciding, answer these questions:

1. One doctor said about this murder: "It makes us ask whether the city is a community or a jungle." What does he mean?

2. What does the editor mean by saying: "The target for blame was in our own mirrors"?

3. Why did the thirty-eight people do nothing? How can "doing nothing" have as great effect as "doing something"?

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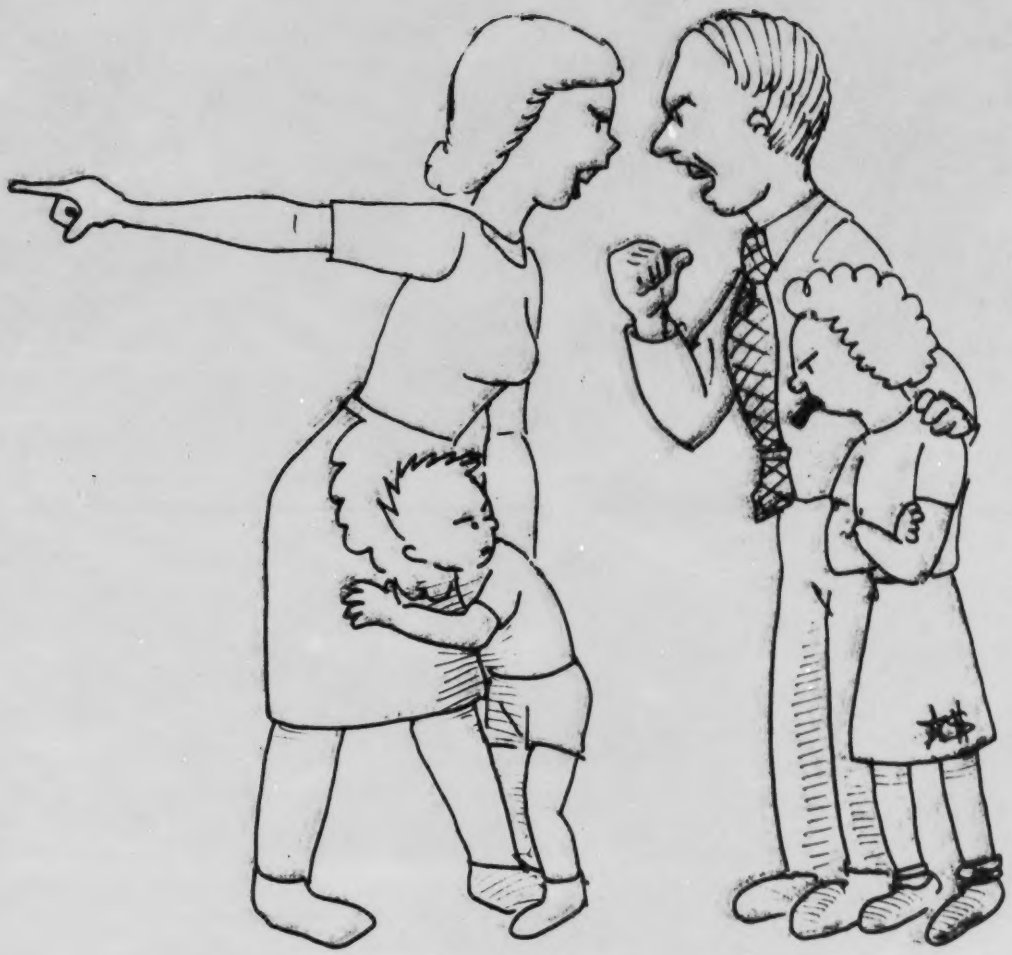

FAMILY & JUVENILE LAW

TITLE: Introduction to Juvenile Law Vocabulary
CATEGORY: Juvenile Justice
DESCRIPTION: Students become familiar with juvenile justice terms and definitions.
AUTHOR/EDITOR: Unknown
PUBLISHER/SCHOOL DISTRICT:

TO TEACHER:

Instruct the students that they will be tested on a list of terms related to juvenile justice.

Instructions:

Step 1: Give each student a list of the terms.

Step 2: Have each student define the terms using a glossary or dictionary.

Step 3: Discuss the terms with the class.

Step 4: Advise students that a test on the terms will be given the following day.

Step 5: Administer the test.

ANSWER KEY

INTRODUCTION TO JUVENILE LAW VOCABULARY

1. A
2. G
3. B
4. I
5. H
6. K
7. J
8. M
9. L
10. N
11. O
12. D
13. C
14. F
15. E
16. Q
17. R
18. P
19. S
20. T

INTRODUCTION TO JUVENILE LAW VOCABULARY

OBJECTIVE: To familiarize the students with vocabulary in juvenile law.

DIRECTIONS: Match the definition from the column on the right with the word at the left by placing the letter next to the appropriate number as shown in number 1.

____ 1. Apprehend	A. To seize, arrest, or take hold of a person.
____ 2. Delinquent Child	B. Crimes that involve destruction of public or private property, trespassing, and burglary.
____ 3. Crimes Against Property	C. Return or restoration of a person to normal (example: non-criminal) behavior.
____ 4. Delinquent Act	D. The defendant will agree to plead guilty to a lesser charge in order to have a greater charge against him/her dropped.
____ 5. Dependent Child	E. An order issued by a judge, especially one directing a law officer to carry out an arrest or a search.
____ 6. Detain	
____ 7. Disturbing the Peace	F. A crime based on moral codes in which there is no victim apart from the person who commits the crime; for example: Vagrancy, gambling, etc.
____ 8. Foster Home	
____ 9. Gault Case	G. A youth who has committed a delinquent act and is in need of care or rehabilitation.
____10. Juvenile Hall	
____11. Parens patriae	H. A youth who is still a minor and/or is unmarried and/or is unable to provide himself/herself with food, clothes, shelter.
____12. Plea Bargaining	
____13. Rehabilitation	I. An act which is a crime under local, state, or federal law.
____14. Victimless Crime	J. A common crime that disturbs or annoys other law-abiding citizens; it includes unruly behavior, noisy public drunkenness, shouting in the middle of the night, etc.
____15. Warrant	
____16. Guardian	
____17. Emancipated Minor	K. To hold a person against his/her will.
____18. Runaway House	L. Established specific juvenile rights.
____19. Probation	M. A home for children without parents or for those who have been taken from their parents.
____20. Status Offense	N. A detention facility for juvenile delinquents.
	O. Doctrine that all orphans, dependent children, and incompetent persons are within the special protection, and under the control, of the state.
	P. Child under 18 who is totally dependent upon himself/herself for support.
	Q. Community-based home for youth who have run away from home.
	R. An adult who has legal responsibility for a child.
	S. Time period during which an offender must report regularly to a court appointed officer rather than go to jail.
	T. An act which is illegal only if committed by a juvenile.

TITLE: Age Laws in Georgia/Gault Case: 1967
CATEGORY: Juvenile Justice
DESCRIPTION: A survey measures student knowledge of age laws in Georgia. This is followed by an analysis of the Gault case.
AUTHOR/EDITOR: Age Law in Georgia -- Institute of Government - Ed Jackson, 1981.
Gault Case: 1967 --John Evans, Chairman, LRE, Atlanta Public Scho
PUBLISHER/SCHOOL DISTRICT: Age Laws in Georgia -- University of Georgia, Athens, Georgia. Printed with Permission.
Gault Case: 1967 - Middle School Law-Related Education, Printed with permission.

TO TEACHER:

These activities give students insight into facts and issues involved in juvenile law.

Instructions:

Step 1: Administer the "Age Laws in Georgia" survey.

Step 2: Discuss the survey with the students.

Step 3: Distribute the "Gault Case: 1967" handout.

Step 4: Have students read and discuss the case.

Step 5: Familiarize students with the list of related terms.

Step 6. Discuss applicable parts of Amendments 5, 6, and 14.

Step 7: Distribute and discuss the handout with the "Discussion Questions: Gault Case" and "Decision".

AGE LAWS IN GEORGIA

Officially, the age of majority--when one becomes an "adult"--in Georgia is 18. Nevertheless, there are many laws which grant rights and responsibilities at ages other than 18. For the following indicate at what age the right or responsibility applies.

* Attend public schools _____
* Get married without parents' permission _____
* Get married with parents' permission _____
* Make a will _____
* Drop out of school _____
* Open a bank account _____
* Adopt a child _____
* Drive a motorcycle _____
* Be charged with a crime _____
* Change your name _____
* Choose which parent (if divorced) you want to live with _____
* Drive a large truck _____
* Be a barber or cosmetologist _____
* Be a page in the General Assembly _____
* Serve on a jury _____
* Go to jail _____
* Pay income taxes _____
* Sue in court _____
* Testify as a witness in court _____
* Give blood _____
* Write a check _____
* Join the military _____
* Buy something on credit _____
* Inherit property or money _____
* Obtain a learner's permit to drive _____
* Be elected to the General Assembly _____
* Vote in city elections _____
* Purchase beer in a package store _____
* Buy a mixed drink in a lounge _____
* See an "R-rated" movie _____
* Establish your legal domicile apart from your parents _____
* Operate a motor boat _____
* Own real property _____
* Pay Social Security taxes _____
* Carry a pistol _____
* Carry a rifle _____
* Hunt deer without direct adult supervision _____
* Work in a hazardous occupation _____
* Work between the hours of 9 pm and 6 am _____
* Work in a retail store _____
* Work in non-retail, non-hazardous employment _____
* Be elected Governor _____
* Play bingo for money or prizes _____
* Drive without an adult in the car _____
* Register to vote _____
* Become a citizen of the state _____
* Be in a pool hall _____

* Pay adult fare to see a movie_____
* Drink beer or wine at home_____
* Serve beer as a waitress_____
* Be employeed as a clerk in a grocery which sells beer_____
* Be on a canoe or pedal boat in a state park_____
* Be on a pedal boat without an adult in a state park_____
* Be on a canoe without an adult in a state park_____
* Go overnight camping in a state park_____
* Get a "child's plate" in a restaurant_____
* Ride a bicycle on a public street_____
* Visit the pediatric section of a hospital_____
* Fish without a license_____
* Hunt without a license_____
* Use dynamite or explosives_____
* Buy and use firecrackers_____
* Drive an "off-road" vehicle_____

Institute of Government
The University of Georgia
March 1981

KEY

AGE LAWS IN GEORGIA

Officially, the age of majority--when one becomes an "adult"--in Georgia is 18. Nevertheless, there are many laws which grant rights and responsibilities at ages other than 18. For the following indicate at what age the right or responsibility applies.

* Attend public schools *Kindergarten--5 (by Sept. 1); 1st grade--6 (by Sept.1); must be in school by 7th birthday*
* Get married without parents' permission *18 (any age if pregnancy)*
* Get married with parents' permission *16*
* Make a will *14*
* Drop out of school *16*
* Open a bank account *any age*
* Adopt a child *25 (if single) or any age (if married)+ 10 yrs older than child*
* Drive a motorcycle *16 (for 6-month limited permit)*
* Be charged with a crime *13*
* Change your name *18 (without parents' permission)*
* Choose which parent (if divorced) you want to live with *14*
* Drive a large truck *18 (6-month permit)*
* Be a barber or cosmetologist *barber-16, cosmetologist-18*
* Be a page in the General Assembly *12*
* Serve on a jury *18*
* Go to jail *Generally, 13 to juvenile centers; 17 for adult institutions*
* Pay income taxes *any age (if you exceed certain income limits)*
* Sue in court *any age*
* Testify as a witness in court *of age to understand nature of oath*
* Give blood *17*
* Write a check *any age (if you have a checking account)*
* Join the military *18 (17 with parents' permission)*
* Buy something on credit *18 (lower age in certain circumstances)*
* Inherit property or money *any age*
* Obtain a learner's permit to drive *15*
* Be elected to the General Assembly *House-21, Senate-25*
* Vote in city elections *18*
* Purchase beer in a package store *19*
* Buy a mixed drink in a lounge *19*
* See an "R-rated" movie *17 (lower ages if accompanied by parent)*
* Establish your legal domicile apart from your parents *18*
* Operate a motor boat *any age*
* Own real property *any age*
* Pay Social Security taxes *any age*
* Carry a pistol *21*
* Carry a rifle *any age*
* Hunt deer without direct adult supervision *16*
* Work in a hazardous occupation *16*
* Work between the hours of 9 pm and 6 am *16*
* Work in a retail store *12*
* Work in non-retail, non-hazardous employment *14*
* Be elected Governor *30*
* Play bingo for money or prizes *18*
* Drive without an adult in the car *16*
* Register to vote *17½*
* Become a citizen of the state *any age*
* Be in a pool hall *any age. If alcohol served, 18 (unless with parent)*

* Pay adult fare to see a movie *12 (age up to theater; not set by law)*
* Drink beer or wine at home *any age if parents consent*
* Serve beer as a waitress *18*
* Be employeed as a clerk in a grocery which sells beer *any age*
* Be on a canoe or pedal boat in a state park *3*
* Be on a pedal boat without an adult in a state park *12*
* Be on a canoe without an adult in a state park *16*
* Go overnight camping in a state park *18 (if unmarried and not w/paren*
* Get a "child's plate" in a restaurant *No set by law; up to restaurant*
* Ride a bicycle on a public street *any age*
* Visit the pediatric section of a hospital *12*
* Fish without a license *under 16*
* Hunt without a license *under 16*
* Use dynamite or explosives *18*
* Buy and use firecrackers *not allowed at any age in Georgia*
* Drive an "off-road" vehicle *any age*

Institute of Government
The University of Georgia
March 1981

GAULT CASE: 1967

Gerald Gault was 15 years old. On a June morning, Gerald and his friend, Ronald Lewis, were arrested by the sheriff. The boys were accused of calling up their neighbor, Mrs. Cook, and making threatening and insulting remarks.

Mrs. Cook had been shocked and frightened by the telephone call. She called the sheriff who traced the call to Gerald and Ronald.

The sheriff took the boys to the Children's Detention Home. A probabion officer, Mr. Flagg, was in charge of the home. Flagg questioned the two boys. They admitted making the call but blamed each other for actually making it.

When Gerald's parents returned from work, they could not find Gerald. His mother sent an older son to the Lewis' home to look for him. The brother returned and told the parents that Gerald had been arrested and was at the Detention Home.

The sheriff had not left a notice at the Gault home telling of the arrest. No one from the sheriff's office called Gerald's parents.

Mrs. Gault and her son went to the home where they learned that a juvenile hearing concerning Gerald would be held the next day.

Judge McGee of the Juvenile Court conducted the hearing. Those present were: Gerald and his mother, Ronald and his parents, Officer Flagg and the judge. Each person had a chance to speak and ask questions. Judge McGee continued the hearing for a week.

At the second hearing no one could remember exactly what had been said at the first hearing. There was much arguing as to who said what and who admitted what. Cook—to whom the calls were made—was not at the hearing. At the conclusion of the hearing, the judge held that Gerald was a juvenile delinquent and placed him in the State Industrial School for the remainder of his minority.

This conviction was appealed to the United States Supreme Court.

For this case, the student should be able to correctly use the following terms:

1. Confidential
2. Guaranteed
3. Lenient
4. Minority
5. Statute

Parts of Amendments 5 and 6 and part of Amendment 14 are applicable to this case study.

Discussion Questions: Gault Case

1. Gerald Gault was found to have made the threatening and insulting telephone calls. What is the name we give to this crime?

2. Mrs. Cook was not at either of Gerald's hearings. Should she have been there? Why or why not?

3. The sheriff's office did not leave a notice or try to contact the Gaults when Gerald was arrested. Should they have notified the parents and if so how should they be notified?

4. Gerald Gault was judged to be a juvenile delinquent. What is a juvenile delinquent?

5. A juvenile has a heading and an adult has a trial. After reading this case—and using the list of selected amendments—which of the accused (Gerald) guaranteed rights do you believe were denied?

6. Today in juvenile courts, juveniles are not guaranteed all of the rights of the accused. Which two rights are withheld from juveniles?

7. The United States Supreme Court heard the appeal on behalf of Gerald Gault. What do you think their decision was—and why?

Decision

Gault's appeal was granted.

In this case, the Supreme Court ruled that a juvenile accused of a crime, as Gerald Gault was, is entitled to the same rights as an adult accused of a crime with the exceptions of the right of a trial by jury and the right to a public trial. The withholding of these two rights is to insure the confidentiality of the juvenile proceedings and to allow the juvenile court to deal with the accused juvenile offender in a more lenient manner in order to correct misbehavior rather than make statutory punishment mandatory.

The Court cited these errors in the Gault case:

1. Neither Gault or his parents were given written notice of the charges against him.

2. No time was allowed for Gerald to prepare a defense.

3. Neither Gault nor his parents were informed that a lawyer could represent him.

4. Gault was not told of his right to remain silent.

5. The person who made the charge (accusation) was not present in court to be examined and cross-examined.

6. No records of the hearings were kept.

7. The punishment given to Gerald (over five years in a juvenile correctional institute) was far greater than could be given to an adult committing the same offense (not more than sixty days in jail).

TITLE: Vandalism
CATEGORY: Juvenile Justice
DESCRIPTION: Students become familiar with basic terminology and issues related to vandalism.
AUTHOR/EDITOR: Donald P. Vetter and Mary Louise Ortenzo
PUBLISHER/SCHOOL DISTRICT: Maryland Public Schools - reprinted by permission, Law-Related Education Program for the Schools of Maryland, 1979.

TO TEACHER:

This is an exploration of the topic "Vandalism", with emphasis on its causes and consequences.

Instructions:

Step 1: Administer and discuss the "Vandalism Poll".

Step 2: Define the related terms.

Step 3: Have students read and discuss "The Case".

Step 4: Role-play and discuss the "Case Situations".

VANDALISM POLL: WHAT DO YOU THINK

After reading each of the following statements below, mark the appropriate letter(s) in the blank space which most accurately reflects your opinion of the statement. There are no right or wrong answers.

SA-Strongly Agree A-Agree U-Uncertain D-Disagree SD-Strongly Disagree

___ 1. Vandalism affects everyone in society, regardless of race, creed, color or socio-economic status.

___ 2. Vandalism is simply a juvenile prank and should not be treated as a criminal offense.

___ 3. If a juvenile and/or his or her parents agree to make restitution for vandalism damage, then no formal charges should be placed against the child.

___ 4. Children are responsible for their own actions and should not be treated so leniently by the Juvenile Justice System.

___ 5. Vandalism is primarily a juvenile related offense.

___ 6. In our justice system, the distinction between juveniles and adults works to the advantage of young people by shielding them from the brutal aspects of the system.

___ 7. Juveniles who commit acts of vandalism should not be sent to juvenile detention facilities, regardless of the number of violations.

___ 8. Our juvenile courts are too lenient on juveniles who vandalize.

___ 9. A juvenile who commits three or more offenses, such as vandalism should be tried as an adult and prosecuted as such.

___ 10. Vandalism is a crime committed mostly by poor, less well-to-do youths.

DEFINITIONS

1. Malicious Vandalism: _____

2. Fun Vandalism: _____

3. Vindictive vandalism: _____

4. Burglary: _____

5. Arrest: _____

6. Petitioned to Juvenile Court: _____

7. Liable: _____

8. Civil Law: _____

9. Criminal Law: _____

THE CASE

Officer Hanson was called to the school shortly after eight o'clock on a Monday morning. Together, he and the principal examined the damage.

"They must have come in through the window," the principal pointed out. "This is our photography room, and we've checked all the equipment thoroughly. There doesn't seem to be anything missing except some petty cash and that was in the desk drawer."

Hanson made a brief note in his book as he attempted to avoid stepping in the developer fluid that had been poured onto the floor. There were torn strips of film, broken lenses, and smashed cameras and projectors lying about on the floor.

"It's all so senseless," the principal said. "All this expensive equipment destroyed. And wait till you see the art room. They dumped paint and glue on the floor and smeared red paint on a mural the kids were working on. The paint has dried and the mural is ruined."

"Can you give me an estimate of the total damage?" Hanson asked.

"At this point, my guess would be about five thousand dollars," the principal replied, rubbing his chin. "Yes, I'd say at least that much. They've destroyed some very valuable equipment."

As Hanson was making another note, a secretary appeared in the doorway. "One of the students would like to see you," she said to the principal. "It seems to be something important."

"Excuse me a moment," the principal said. While he was gone, Officer Hanson took photographs of the damage with his police camera. He photographed the room from three different angles before the principal returned and handed him a slip of paper with the names of two boys on it.

"These boys are both students here," he said. "That's what the girl wanted to tell me. She's one of the students who was working on the mural. She says these are the boys who did the damage."

Hanson snapped his camera shut. "Let's talk to her."

According to the girl, she and a friend were walking through the campus on Sunday afternoon when they heard the sound of glass being smashed in the photography room. They looked in the window and saw the two boys. Yes, she knew both of them. There was no doubt about whom she saw. She hadn't intended to say anything at first, but when she heard about the mural being destroyed -- well, that was too much. She and her friends had put in a great deal of time and work on the mural.

Hanson asked the principal to check the attendance office. One of the boys, Rick Glover, was in school. But the other, Eddy Casey was absent. They sent a messenger to Rick's class to call him into the principal's office. Rick soon came in and was introduced to Officer Hanson.

"Sit down," Hanson said to the boy. "There was some damage done to some of the school property over the weekend, and I understand you and Eddy Casey are responsible for it."

The boy started to reply, but Hanson held up a cautioning hand. "Let me tell you, before you say anything, that anything you say can be used against you. You're not required to make any statements, and if you want an attorney, you can call one now or at any time, and if you can't afford an attorney, one will be provided for you."

"Do you understand what Officer Hanson is telling you?" the principal asked.

Rick nodded. "Sure, but I don't know anything about the damage. The kids were talking about it this morning. That's the first I heard."

"All right," Officer Hanson said. "I'm placing you under arrest, Rick. I'm going to call your parents."

The boy broke in, "You don't have to tell my mother, do you?"

"I'm afraid so, Rick. The law requires it."

"But, I don't want her to find out," Rick said.

Again, Hanson cautioned the boy, "You'd better not say anything more."

"No, it's all right," the boy insisted. "I know what my rights are. I'll tell you about it. It was me and Eddy. There was another kid with us, but he didn't want to go with us. When we told him we were going to break in, he split. Eddy and me were going to take a couple of cameras, but after we got in, we figured it was too risky. So we just looked around, and we found some money in the desk. We split it. About two dollars apiece."

The principal broke in, "But, what about the damage, Rick. Why did you smash all that valuable equipment?"

Rick looked at the floor and shook his head. "I don't know. We broke a couple of things just for fun. We started laughing about it, and then I guess we just wanted to outdo each other. You know, like one of those old Laurel and Hardy flicks. We take turns. First you smash something, and then I smash something. And, we just stand there and watch each other. It seemed funny at the time."

"Does it seem funny now?" Hanson asked.

The boy slowly shook his head. "It's not funny at all. We just didn't think, I guess. We didn't realize how it would be on Monday morning. The kids are all talking about it, and they're all uptight. Man, I'll bet they'd fix me if they knew I did it."

Officer Hanson made his call to Rick's mother and told her that he was taking the boy to Juvenile Hall where he would be handed over to the juvenile authorities.

That evening, Officer Hanson went to Eddy Casey's house. He was greeted at the door by Eddy's father. Hanson introduced himself to Mr. Casey and showed him his identification. There was some vandalism at Eddy's school over the weekend," he explained. "I believe that Eddy was involved in it."

Mr. Casey frowned. He obviously did not like what he heard. "Come in," he said. He called Eddy into the living room. Mrs. Casey came with him.

There were two witnesses," Hanson explained, "who saw Eddy and Rick Glover inside the school Sunday afternoon."

Mrs Casey asked anxiously, "Is that true, Eddy?"

Before Eddy could answer, Officer Hanson told him of his rights, as he had Rick. "I'm placing you under arrest in any case," he said. "We're going to recommend that both you and Rick be petitioned to Juvenile Court. That means that there will be a hearing so the court can examine the evidence and question witnesses." He turned to Mr. and Mrs. Casey. "As Eddy's parents, you can, in this state, be held liable for damage to school property. There was about five thousand dollars worth of damage. That means that you, as parents of one of the boys, might have to pay back to the school district as much as twenty-five hundred dollars."

Mr. Casey was obviously shaken. "Look, Officer, I don't understand," he said. "Why are you arresting Eddy if we have to pay for the damages?"

"There is both civil and criminal law involved here," Hanson explained. "When I said you were liable for damages, I meant that the school could bring a civil suit against you to pay for the damage. Even though you pay the money, the state can still hold Eddy responsible for his own offenses. I'm arresting him for burglary and malicious mischief."

"You see," Hanson continued, "the law is concerned with a person's intent as well as his acts. When the boys entered the school, they apparently intended to steal some cameras. The fact that they changed their minds after they got in doesn't alter the situation. Their reason for entering was to commit an unlawful act. The crime of burglary was complete as soon as they were in the building -- even before they had taken anything. As it turned out, they did steal some money."

Mr. Casey nodded. "I guess I understand."

"It's the law's concern for an individual's right to be safe and secure in his home," Hanson explained further. "It extends also to other kinds of buildings such as stores and warehouses. The law holds that a person has the right to the safety and security of his property no matter where he keeps it."

"But, in this case," Mr. Casey said, "it seems the damage the boys did was really more serious -- worse than the burglary."

"That's right," Hanson agreed, "if you want to put it on a dollars and cents basis. The money they took was just a few dollars. But they very quickly destroyed property worth thousands of dollars. That's why we have laws against malicious mischief."

Mr. Casey looked at his son. "Is this all true, Eddy?"

The boy looked up. Finally, he nodded. "I was so scared about it, I cut school today," he said. "I knew they'd be talking about it and I knew they'd be asking questions." He paused. "But, I don't want to be arrested." He looked at his father. "Do I have to go with him?"

Hanson stood up. "Your parents have nothing to say about it, Eddy. And, I don't either, really. When something is this serious, I have the responsibility to place you under arrest and let the court deal with you."

"But, I didn't think we did that much damage," Eddy protested.

"That was Rick's excuse, too," Officer Hanson said. "He didn't think. That's how so many people get into trouble. They don't stop and think. Did you consider for instance, whose property you were destroying?"

Eddy shook his head.

"That's why this was so senseless," Hanson said. "It was your own property you destroyed. It belongs to you and me and your parents and every kid in school. It belongs to all of us, Eddy. And we all have a responsibility to take care of it. You and Rick chose to ignore that. Laws exist to be sure that people live up to their responsibilities. That's what the law is all about."

The hand Officer Hanson placed on Eddy's arm was firm and strong. "And that's why you have to come with me," he said.

HOW DOES VANDALISM AFFECT YOU?

DIRECTIONS: After each of the following acts of vandalism are role-played in class, list as many possible ways you can that the act might eventually affect you. If you have access to your city's ordinances on vandalism, also list the possible consequences to the vandal who committed the act.

1. Several young teenagers are angry at the owner of a local movie theater, so to "get back" at him, they tear the cushions of a number of theater seats.

   EFFECTS:_____

   CONSEQUENCES:_____

2. A group of kids become bored while riding around town one night. For fun, they turn several street signs around and uproot several "Stop" and "Yield" signs.

   EFFECTS:_____

   CONSEQUENCES:_____

3. A group of students decide to "get even" with the "Fussy" school librarian by breaking into an audio-visual storage room and damaging projectors and record players.

   EFFECTS:_____

   CONSEQUENCES:_____

4. Several boys have a contest to see who can break the most windows on the back side of a school building.

   EFFECTS:_____

   CONSEQUENCES:_____

5. To create some excitement several girls at a party report a "serious" fire in their neighborhood to both the fire and police departments.

   EFFECTS:_____

   CONSEQUENCES:_____

6. Several youngsters decide to "clean up" the town by dumping several cartons of detergent into the town's largest fountain or public swimming pool.

   EFFECTS:_____

   CONSEQUENCES:_____

7. A group of young people test the quality of food at a local supermarket by opening some packages and pocketing others.

EFFECTS:_____

CONSEQUENCES:_____

TITLE: Joyride Leads to Trouble
CATEGORY: Juvenile Justice
DESCRIPTION: Students role-play a case involving juvenile justice.
AUTHOR/EDITOR: Thelma Gibson
PUBLISHER/SCHOOL DISTRICT: DeKalb County School System, Spring Workshop, 1979.

TO TEACHER:

The following role-play simulation is designed to demonstrate the steps through which criminal proceedings are handled for juveniles. This role play is suitable to accompany a unit on the Juvenile Court or a discussion on the most common juvenile offenses. Magic Squares Vocabulary -- pre- and/or post-evaluation, see P. 176 and Step 7.

Instructions:

Step 1: Select students to portray the following roles:

1. Bob Johnson
2. Mr. and Mrs. Johnson
3. Mr. Larson (probation officer)
4. Mr. Roberts
5. Judge Wright

Step 2: Give each role player a copy of "A Joyride Leads to Trouble".

Step 3: Instruct role players to familiarize themselves with the handout and to especially concern themselves with learning the dialogue that discusses what will happen to Bob.

Step 4: On the day of the role-play, inform the class that three scenes will take place. SCENE 1: in a room at the police station involving Bob, his father, and Mr. Lawson; SCENE 2: at Bob's home with his parents; SCENE 3: in Judge Wright's court involving Bob, the judge, the lawyer, the probation officer and Bob's parents.

Step 5: Instruct students to note all statements made which refer to the role of the court.

Step 6: After all three scenes have been enacted, a classroom discussion of the events should begin. A resource person such as a lawyer, a judge, or a probation officer, should be used. Otherwise, the teacher may conduct class discussion.

Step 7: Magic Squares Evaluation can be part of evaluation pre- and/or post.

"A JOYRIDE LEADS TO TROUBLE"
MAGIC SQUARES

DIRECTIONS: From the answer column at the left, select the word that best fits the definition at the right. Write the number of the answer you choose in the lettered square. If your answers are correct, the sums will form a magic square. Added vertically, horizontally, or diagonally, the total will be the same. Find the number.

A	B	C	D
E	F	G	H
I	J	K	L
M	N	O	P

The Magic number is:___

1.	Juvenile	A.	A person appointed or elected to hear and decide questions of law in court cases and make sure fair procedures are followed.
2.	Hearing	B.	A juvenile court proceeding where judge hears the case.
3.	Grand Theft Auto	C.	Taking a car without consent of the owner.
4.	Intake Hearing	D.	Attorney appointed by the court to provide legal aid to persons with limited financial resources.
5.	Court Clerk	E.	Person who keeps court records, official files, etc.
6.	Paroled	F.	A ride in a stolen auto.
7.	Training School	G.	A period during which a young person is under the watchful eye of the court to make sure certain rules are obeyed.
8.	Custody	H.	Control exercised by an authority over another person.
9.	Cross-Examination	I.	Questioning witness(es) to determine if testimony is correct.
10.	Probation	J.	A place where juvenile delinquents are kept.
11.	Joyride	K.	Conditionally released during good behavior
12.	Miranda Rights	L.	Due process that provides that an arrested person has the right to remain silent until proper procedures are followed.
13.	Public Defender	M.	A juvenile proceeding taking place before a hearing in which intake officials try to deal with a case informally.
14.	Juvenile Delinquent	N.	Young Person under a certain age who is truant, unruly, or incorrigible.
15.	Sealed Record	O.	Confidentiality of a juvenile delinquent's records.
16.	Judge	P.	A young person below a certain age, ranging from 16 to 21.

A JOYRIDE LEADS TO TROUBLE

It sure has been one of those days, Bob Johnson thought to himself as he sat at the kitchen table. Much too hot to run around outside. And too hot to stay indoors.

Bob thought of his friends. Most of them were away for the day. Tommy and his parents had gone to visit his grandparents. Bill had gone to camp. Jim had run away from home again.

"I sure wish I had something to do," Bob said aloud. "Anything." He crossed the kitchen to the small window that looked out on the sunny street below. A flashy car caught his eye. It was a convertible -- red and white. Man, does that look fast! Bob thought.

Suddenly a figure came out of a doorway near the car. It was a young man. Bob recognized him right away. That's Chuck Maynard. Where would he get a sharp car like that? he thought.

But there was Chuck. Opening the door and sliding behind the driver's seat. Bob waited. But the car didn't start. Chuck just sat there behind the wheel.

Bob made a fast decision. He ran from the apartment and down the stairs. In a minute he was on the street heading for the red convertible.

Bob stuck his head inside the window on the passenger's side. "How're you doing, Chuck?"

"Hi, Bob," Chuck said. "What's doing, man?"

"Where'd you get these wheels, man?" Bob asked.

"They're my uncle's. Yeah, my uncle's wheels."

"Really sharp!"

"Want a ride?" Chuck asked.

Bob thought of going back to the hot apartment. What was the choice? The hot apartment or a ride in a great red convertible. He thought for a minute. It might be fun, he thought. "Let's go," he said as he slid into the car.

Chuck reached under the dashboard and played with some wires. The engine caught and the car started.

Bob was a little scared. "Hey, man, if this is your uncle's car, how come you had to fool with the wires to get it started?" he asked.

Chuck laughed. "OK, so it ain't his car. I just borrowed it from the owner for a while. You want out?"

Bob thought to himself. What's the harm? We'll just go for a ride and then leave the car somewhere. The owner will get it back. Nobody will be hurt and I'll have a good time for a couple of hours. He looked at Chuck. "Let's keep going," he said.

The car moved quickly through city traffic. Soon they were on a highway heading for the city's outskirts. Bob was really having fun. The wind blew through his hair and he quickly forgot what a drag the day had been.

"This is great," he said to Chuck.

"Aren't you glad you came along?"

"I sure am glad. This beats sitting in the house any day of the week."

Bob and Chuck were having too much fun to see the blue-and-white police cruiser swing onto the road behind them. The cruiser stayed behind them for a few miles. Suddenly its siren blared loudly.

Chuck checked the rearview mirror. "It's the police. We'll have to get out of here," he said.

Bob looked back. The cruiser had picked up speed and was quickly closing the distance between them. "Better stop," he said. "I don't think we can outrun them."

But Chuck just stepped harder on the gas pedal. The convertible picked up speed. "No way," Chuck yelled over the noise of the wind rushing through the car and the siren behind them. "I've been in trouble with the cops before. I'm already on probation. I can't afford to be caught again."

The cruiser was getting closer all the time. The convertible was no match for the police car. The police car came alongside. Bob could see one of the policemen inside wave them over.

Chuck seemed to give up. He pulled to the side of the road. "As soon as I stop, run for it," he told Bob. The car stopped suddenly, spinning in the dirt on the side of the road. Chuck's door was open and he was running toward a fence. Bob sat still. He was scared.

A shot rang out. "Hold it right there!" a policeman yelled. "Unless you think you can run faster than a bullet."

Chuck stopped. The policeman ran after him. Suddenly the other policeman was pulling Bob from the convertible.

The policeman put handcuffs on Bob. Another police car pulled up and Chuck was taken away. A young policeman got into the back of the cruiser with Bob. He had a black notebook in his hand.

"What's your name, son?" he asked.

"Bob Johnson."

"Where do you live?"

"2730 West 57th Street."

"How old are you?"

"Fourteen."

"Where are your parents?"

"They're both at work today. My dad works at the Acme Appliance Factory downtown. My mother works at the Broadway Department Store."

"I want to tell you your rights," the policeman said. "From now on, you have the right to remain silent. Anything you say may and will be used against you in a court of law. You have the right to have a lawyer. If you cannot afford one, we will get one for you."

"I understand," Bob said. The police car started up. Bob sank quietly into the seat.

"We were just taking a little ride. We were going to give the car back," Bob said. The policeman just looked straight ahead.

When they got to the police station, Bob was put in a little room. He was searched and then left alone. He was alone for a long time.

Suddenly the door opened. His father walked in, followed by a man he had never seen before.

"What is all this?" his father asked loudly. "What were you doing in that stolen car?"

Bob just sat still, looking at his father. He couldn't think of anything to say. His father just got angrier. "What do you have to say for yourself? Just don't sit there like a dummy. Say something!"

"Getting angry won't help, Mr. Johnson." It was the strange man speaking. "Let's find out what happened."

Bob's father looked at the man. "OK, Mr. Larson. You're right, of course."

"Bob, this is Mr. Larson. He's a probation officer with the family court. He'll decide what's going to happen to you."

Bob looked at Mr. Larson. "Will I go to jail?" he asked.

"You're a juvenile because you're under 18 years of age. You won't be going to a regular criminal court. And you certainly won't be going to jail -- at least not what you think of as jail," Mr. Larson said.

"Suppose you tell us what happened," Bob's father said.

"I thought I had the right to have a lawyer," Bob said.

"You do," Mr. Larson said. "Do you want us to get one for you?"

"I don't think that'll be necessary yet," Mr. Johnson said. "Let's see what happened first."

Bob told his story. He told about sitting in the house and seeing Chuck in the car below. He told of questioning Chuck about the car and finding out that it was stolen. He told about how they were going to return it. And he told of his arrest.

"Very good. I think you're telling the truth," Mr. Larson said. "Now there are three things that I can do. I can send this case to a court for a hearing. Or I can decide to handle it myself -- just let it go. Or I can hold it for 60 days until I decide. If I decide that you will have a hearing, it will have to be within the next three days."

"What will you do?" Bob asked.

"I haven't decided yet. I want to see if you have ever been in trouble before."

"This is the first -- and the last -- time."

"We'll see. Meanwhile, I'm going to let you go with your father. I could have you held in a juvenile home until your hearing, if I wanted. But I think you will listen to your father. So you can go now."

"What's going to happen to Chuck?" Bob asked.

"Chuck is 18. That makes him an adult," Mr. Larson said. "The regular court will take care of him."

Bob left with his father. They hardly spoke on the way home. When they arrived at the apartment, Bob's mother was waiting. She was angry. Bob tried to explain what had happened.

The phone rang. Bob's father answered it. It was Mr. Larson. Bob's father listened. Then he hung up.

"That was Mr. Larson," he said. "Even though you have no record, you will have to go to a hearing. The charge against you is grand theft. Auto theft is too big a charge for him to let you off. Your intake hearing is tomorrow at 9 o'clock."

Bob could hardly sleep that night. He kept thinking of the hearing. He had nightmares of being in a prison.

When morning came, Bob and his parents went to the family court building. Bob's father spoke to the man at a small desk near the entrance. The man told them to go to Room 784. They took an elevator to the seventh floor and walked down the hall to 784.

The intake office was small. There were several desks scattered through the room. Bob and his parents were shown to a desk near the back of the room.

Bob saw Mr. Larson sitting there. With him was a woman and two men. The woman, it turned out, was Judge Jane Wright. The others were a clerk and a reporter. They would make a record of what was said.

"Tell me what happened," Judge Wright said. Bob told her the story.

"Does this young man have any other police record?" the judge asked Mr. Larson.

"No, Your Honor," he said.

"Very well. I'm going to tell you what will happen now," she said. There will be a hearing the day after tomorrow. At that hearing, the people who saw you in that car will tell their story. You will tell yours. The judge will hear about your school record. Then the judge will decide what to do. The judge can let you go. You can be paroled. Or the judge can send you to a training school for a period of 18 months."

"Will there be a jury?" Bob asked.

"No, juveniles do not have the right to trial by jury. In fact, this is not really a trial. Just a hearing. You, or your lawyer, will have the right to cross-examine the witnesses against you. After everyone tells his story, the judge will decide. Meanwhile, I will let you go in the custody of your parents."

Bob and his parents went home. Bob's parents would not let him out of the house until the hearing. He was bored. But, he listened to them. He didn't want to go to the school that Judge Wright had mentioned.

The hearing date came quickly. Bob and his parents went to meet with Mr. Roberts, the lawyer the court had assigned to his case. He told Mr. Roberts his story.

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"Well, it sounds as if we can get you off easily if you tell the truth and say you did it," Mr. Roberts said.

Bob agreed. They went to the hearing. The judge sat behind a big bench. Bob, Mr. Roberts, and Bob's parents sat behind one table. Mr. Larson sat behind another table with another man.

The judge opened the hearing. The man who was with Mr. Larson said it was his car and that he had seen Bob and another boy get into the car and drive away.

Bob told his story. He told it just as it happened, leaving out nothing.

The judge asked Mr. Larson about Bob's past record.

"Bob has never been in trouble before, Your Honor. And his school record is very good."

The judge thought for a minute. "Bob, I could send you to a state training school for a year and a half. But, I think you've learned your lesson, so I'm going to put you on probation for one year. Do you know what that means?"

"No, sir," Bob said.

You will have to report to Mr. Larson one day each month. He will check to see that you are staying out of trouble and doing well in school. You cannot be out of the house after 11 at night. And you must obey your parents. If you do anything wrong, you will be sent to training school. Do you understand?"

"Yes, sir." Bob said.

The judge let them go. Mr. Larson explained that the record of the hearing would be sealed so that nobody would ever know about it.

Bob went home with his parents. He thought to himself that he was really lucky. That's the last time I'll ever get in that kind of trouble, he thought as he looked out the window.

TITLE: Juvenile Rights
CATEGORY: Juvenile Justice
AUTHOR/EDITOR: J. Walburn
PUBLISHER/SCHOOL DISTRICT: DeKalb County Workshop, 1978.

TO TEACHER:

This can be used to develop understanding of dilemma of facing Juvenile Court judges and probation officers. This could be extended by interviewing a Juvenile Court officer on Question #1.

Pretend you are a judge about to sentence a 15 year old who was found guilty of burglary. He is on probation for stealing from a department store, performs poorly in school, and his parents tell you that they cannot seem to control him.

Instructions

Step 1: The class should break up into small groups of four to six students.

Step 2: Each group should write out reactions to the following questions after discussion and debate.

Step 3: Each group should select a recorder to write out the answers to each question finally agreed on by the majority.

Step 4: The entire class should discuss and compare the various small group decisions after each group has completed step number three.

Questions for Discussion

1. What alternatives are open to the judge?
2. What should he do?
3. Should the 15 year old receive the same penalty as someone who is 25 and committed the same crime?
4. The Supreme Court has granted some of the same rights guaranteed adults to juveniles charged with crimes in state courts. Some of these rights include the right to a speedy trial, the right to be represented by a lawyer (court-appointed, if necessary), the right to confront and cross-examine witnesses, and the privilege against self-incrimination. Do you think juveniles should have the same rights before the law that adults have?
5. Should juveniles receive the same punishments adults receive for committing similar crimes?

TITLE: Child Abuse
CATEGORY: Family Law
DESCRIPTION: A unit providing some activities and basic resources designed to help students investigate the current legal status and the sociological content of child abuse.
AUTHOR/EDITOR: Anne Rogers, Cobb County Workshop, 1978.
"Juvenile Court Proceedings" -- A Resource Guide to Assist Lawyers and Law Students for Participation in K-8 Law-Related Education Classrooms. Publication of Phi Alpha Delta Fraternity International, Juvenile Justice Office, Washington, D.C., 2/81: $4.00. Reprinted with permission.

TO THE TEACHER:

Students should be aware of and understand the problems and ramifications associated with child abuse. They should also be aware of the increasing incidences of the problem and have knowledge concerning its symptoms and methods of alleviation. This unit helps to bring the problem into the classroom where it can be analyzed and discussed in an objective manner. It should result in increased awareness of the problem and in willingness to take action aimed toward prevention of the development of "next generation" child abusers. The news media constantly reports cases of child abuse and could provide current-interest/motivation to introduce the study.

Prior to initiating this unit, teacher should become knowledgeable about current statistics in Georgia and the United States and should secure resources for student research. It is also recommended that a qualified resource person be secured as a consultant and authoritative speaker during this study.

OBJECTIVES ARE:

Students will be able to:

1. Define and give examples of "child abuse", "battered child" and other related terms.
2. Identify situations that might lead to child abuse.
3. Suggest reasons why child abuse is on the increase.
4. List and explain some ways to alleviate the increasing rate of child abuse.
5. Name and locate the public agency(ies) that should be called upon to help in child abuse cases in the local community.
6. Outline steps to be taken in reporting child abuse cases.
7. List the common signs of child abuse.
8. State common social and legal penalties for child abuse in Georgia.
9. List emotional and physical effects of child abuse.

INSTRUCTIONAL PROCEDURES:

1. Administer pre-test (see page 190). It is advisable to do this a week prior to beginning the unit to identify those areas in which students' knowledge is lacking and would, therefore, become those emphasized in the unit.

2. Introducing the unit:

Divide the class into groups of 4-6. Ask each group to discuss and record group consensus on:

1. What is child abuse?
2. What are its causes?
3. What can be done to stop it?

Each group will be allowed 10 minutes or more to formulate their answers before reporting to the class. They are not to use resource material but must rely solely on their own conceptions of the problem.

After the groups have responded, allow a short period of time for each group to report. Organize the data into categories and identify those areas where it will be necessary to verify the data, to research for supportive data, and where the data reflects consensus of the entire class. This should identify the questions to ask resource persons, the legal definitions needed, what to research for in the literature, the vocabulary that needs to be defined, etc.

The teacher can assign research and interview groups, or serve as the resource person to supply the basic knowledge essential to the subject. The following activities should help students define their dilemmas and their understanding of legal issues involved.

POLICE CALL*:

Divide class into groups of five members each and give each group the following assignment:

Two will be the police, two the parents, and one the observer. Observers must leave the group until it is ready to role-play the incident because their function is to critique what takes place. Bring all policemen together and instruct them on Miranda Warning and Waiver, Probable Cause and General Police Procedures while each pair of parents plan separately. The observer instructions include observing the following:

1. General and fair critique of the group's role-play.
2. Were role-plays realistic, too positive, too negative, unrealistic?

*Adapted from Police Patrol by Todd Clark, Constitutional Rights Foundation, Copyright 1973, by SIMILE II.

3. Were police role-plays realistic; too positive; too negative; unrealistic?
4. Were legal rights violated?

Police answer call to local Day Care Center where staff suspects child battering. Parents are at the Center for counseling appointment.

You are to plan and role-play the interview of the parents regarding the questionable injuries to the child.

Consider the two questions that influence the situation:

1. How will the parents react to the suggestion and/or accusation of child battering?

2. How would a child, is is old enough, respond to the police?

Each group should role-play the incident simultaneously and the observer's critique during general class discussion should include how each felt in the role played, how legal rights must be protected, etc.

CASE STUDY ACTIVITIES

These three cases are typical of many the teacher can put together to stimulate discussion of sociological causes of child abuse.

Read each of the following case studies. Give a yes or no answer indicating whether or not you believe child abuse might occur in each case. State reasons for your belief. If your answer is yes, give steps that might be taken to prevent it. (See page 188.)

SPEAKER

A representative from the local Family and Children's Services could help the class understand the problem of child abuse. Prior to the visit, have the students prepare a set of questions and topics they wish to discuss. Have the speaker outline the services the agency renders and steps taken in reporting incidences of child abuse. Also include the penalties or sanctions given to child abusers and the pros and cons of removing a child from the home.

A MORAL-DILEMMA QUESTION

One of the dilemmas faced by doctors and school personnel concerns the reporting of child abuse. Ask the students:

"Does a doctor's reporting of battered child symptoms conflict with the confidentiality the doctor owes to the patient?"

Call on members of the class to express their opinions regarding the qbove question. After a discussion of the issue, read the following excerpt from Troubled Parents, Their Children, and Georgia's Protective Services Program.

"Georgia law (Georgia Code Annotated Section 74-111) requires mandatory reporting by certain individuals who have cause to believe that a child has been physically injured, other than by accident, by a parent or guardian. These individuals include physicians, nurses, social workers, teachers and others responsible for health, welfare, or education of children. Individuals making reports are provided confidentiality and immunity from civil or criminal liability resulting from such reports made in good faith."

Continue the discussion.

CASE STUDY ACTIVITIES

CASE I

Linda has been divorced eight months. She has no skill and must rely on her ex-husband for what money she and her 10-month old child have for food, shelter and clothing. She has only enough money to pay the rent and buy enough groceries for one meal a day. The electric company and water company are threatening to cut off their services. She could work as a waitress at the restaurant on the corner but has no friend or relative who could keep her baby. The baby is often hungry and ill and is constantly crying. Linda has tension headaches when she is "under pressure" and around a lot of noise.

CASE II

When Joe was small, his father often beat him. If the father was drunk, as often occurred, he would tie Joe to a tree and beat him until he bled. Joe's mother was usually out of the home when this happened. His parents argued constantly over bills and the father's drinking.

Now Joe is 31, married, and has two small children. His wife works shift work, but her income does not offset their high bills or the money spent on Joe's constant drinking.

CASE III

Mary has one child, is widowed and lives in a small house near the middle of town. She has no car but has access to a day care center, grocery store, department store and the shop where she works. Her salary is small but occasionally she is able to save enough to treat her child and herself to ice cream cones in the park. She would like to remarry but has no eligible bachelor friends. She is very lonely.

ESSENTIAL VOCABULARY

1. AGENCY - administrative division of local, state or federal government.
2. CHILD ABUSE - intentional neglect or injury to a minor.
3. CHILD NEGLECT - a form of child abuse resulting from a parent or guardian's failure to perform certain necessary functions for the child.
4. BATTERED CHILD - one who has been physically abused.
5. BATTERED CHILD SYNDROME - effects of abuse which has resulted in physical and emotional damage to the child.
6. EMANCIPATED MINOR - child under 18 who is totally dependent upon himself/herself for support.
7. ENVIRONMENT - physical and social surroundings of a person.
8. FOSTER HOME - home for children who are without parents, who have been given up by their parents, or who have been taken from their parents.
9. GUARDIAN - adult who has legal responsibility for a child.
10. ILLEGITIMATE - born to parents who are not married to each other.
11. INCEST - marrying or having sexual relations with a person close in kin.
12. INTRAFAMILY - within a family, between members of a family.
13. MAINTENANCE - means of subsistence.
14. NECESSITIES - basic needs such as food, shelter and clothing.
15. PINS - anacronym for persons in need of supervision.
16. REHABILITATION - return or restoration of a person to acceptable behavior.
17. RUNAWAY HOUSE - community-based home for youth who have run away from home.
18. STEP-CHILD - child who has a parent by his/her mother or father's remarriage, and has not been adopted by that parent.
19. ABANDONMENT - the giving up of a child or leaving of a child without supervision.
20. PARENTS ANONYMOUS - organization a potential abuser may call to get immediate aid (operates very much like Alcoholics Anonymous).

SUGGESTED VOCABULARY QUIZ:
(Fill-in-the-Blank)

1. An _____ is an administrative division of the local, state or federal government.
2. A _____ is one who has been physically abused.
3. A child under 18 who is totally dependent upon himself/herself for support is called _____.
4. A person's physical and social surroundings are called his _____.
5. An adult who has legal responsibility for a child is called a _____.
6. A child under 18 is called a _____.
7. _____ refers to persons who are in need of supervision.
8. _____ is intended neglect or injury to a child.
9. _____ refers to the restoration of a person to acceptable behavior.
10. _____ is an organization parents may call which operates to help prevent a parent from abusing his/her child.

IDENTIFY:

1. FOSTER HOME:
2. STEP-CHILD:
3. RUNAWAY HOUSE:
4. CHILD NEGLECT:
5. BATTERED CHILD SYNDROME:

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Seventh and Eighth Grade: Juvenile Court Proceedings

From Phi Alpha Delta Fraternity International, Juvenile Justice Offi February, 1981, Pages 42-57.
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BACKGROUND

Seventh and eighth grades are often difficult times for the young adolescent. The student can be at an awkward age, influenced by peer pressure and anxious for approval. This can be an age of mischievous behavior and perhaps some serious problems with the law. The sample lesson for the resource person is aimed at helping to put on a mock juvenile hearing of a child abuse and neglect case. The case helps the students have a broader perspective of the court and the responsibilities of court personnel. The lawyer or law student assists with the hearing by making certain that there are no blatant errors of due process and by debriefing the case with the students. The following hearing and debriefing questions are from *Juvenile Problems and Law*, Second Edition, West Publishing Company, 1980.

In junior or middle school settings, classes are generally taught in fifty-minute time periods. A mock juvenile trial may take more than one class period. The time consideration will definitely need to be discussed with the teacher.

PRE-VISIT

The teacher should teach a brief history of the juvenile court and if possible, go over the Gerald Gault case, a landmark case about treatment of juveniles by courts. *In re Gault* (1967), 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed. 2d 527. Students should understand words such as: due process, judge and juvenile hearing. *Juvenile Problems & Law* has lessons dealing with these areas, as does the Constitutional Rights Foundation publication, *Criminal Justice*, Scholastic Books, 1978. The attached hearing, pages 43-57, should be prepared and presented for the resource lawyer.

RESOURCE PERSON'S VISIT

Introduce yourself and tell students where you work, what kind of law you practice, and describe your law school experience. Any experience with the juvenile court in a legal capacity with a specific example could be highlighted. Have the students put on their hearing for you. You need to keep notes of the hearing. After the hearing, it is important for the students to see that you thought they did a good job. Point out as many positive points as possible. In the debriefing, bring up points of major law and due process, keeping in mind that they should be communicated from a positive standpoint. For example, "You did a good job with questioning the witness but it is important to bring out ... such and such." Sample debriefing questions are in the last page of the hearing attachments. Open the discussion for questions within the time remaining.

FOLLOW-UP

Students could present their hearing for another group of seventh or eighth grade students, incorporating the changes suggested by the lawyer. They could lead up to, but not provide the decision of the juvenile judge in the case. The audience could then suggest outcomes, giving reasons for their ideas. Afterwards, the seventh or eighth grade teachers could briefly discuss what they have learned about the juvenile court.

Note to teacher: The problem of child abuse and neglect has been given more public attention in recent years. Many more cases are now being reported because state laws now mandate certain professionals to report suspected child abuse or neglect. Also persons reporting cases are protected from liability through the immunity from liability clause which protects those who report in good faith. The difficulties that social service agencies are now facing are numerous: defining abuse and neglect, responding to large numbers of reports, and providing services to families who have been identified as abusing or neglecting their children. Definitions of child abuse vary from state to state. Although many state laws include definitions of "physical abuse," "neglect," "sexual abuse," and "emotional maltreatment," there is often little guidance as to when and under what circumstances such conditions warrant legal intervention.

Child abuse and neglect is a developing area of law. Important questions are being raised such as: "What degree of abuse or neglect warrants taking a child from his/her home?" and "What responsibilities does a community have to provide services to help and teach parents so that they can do a better job of caring for their children?"

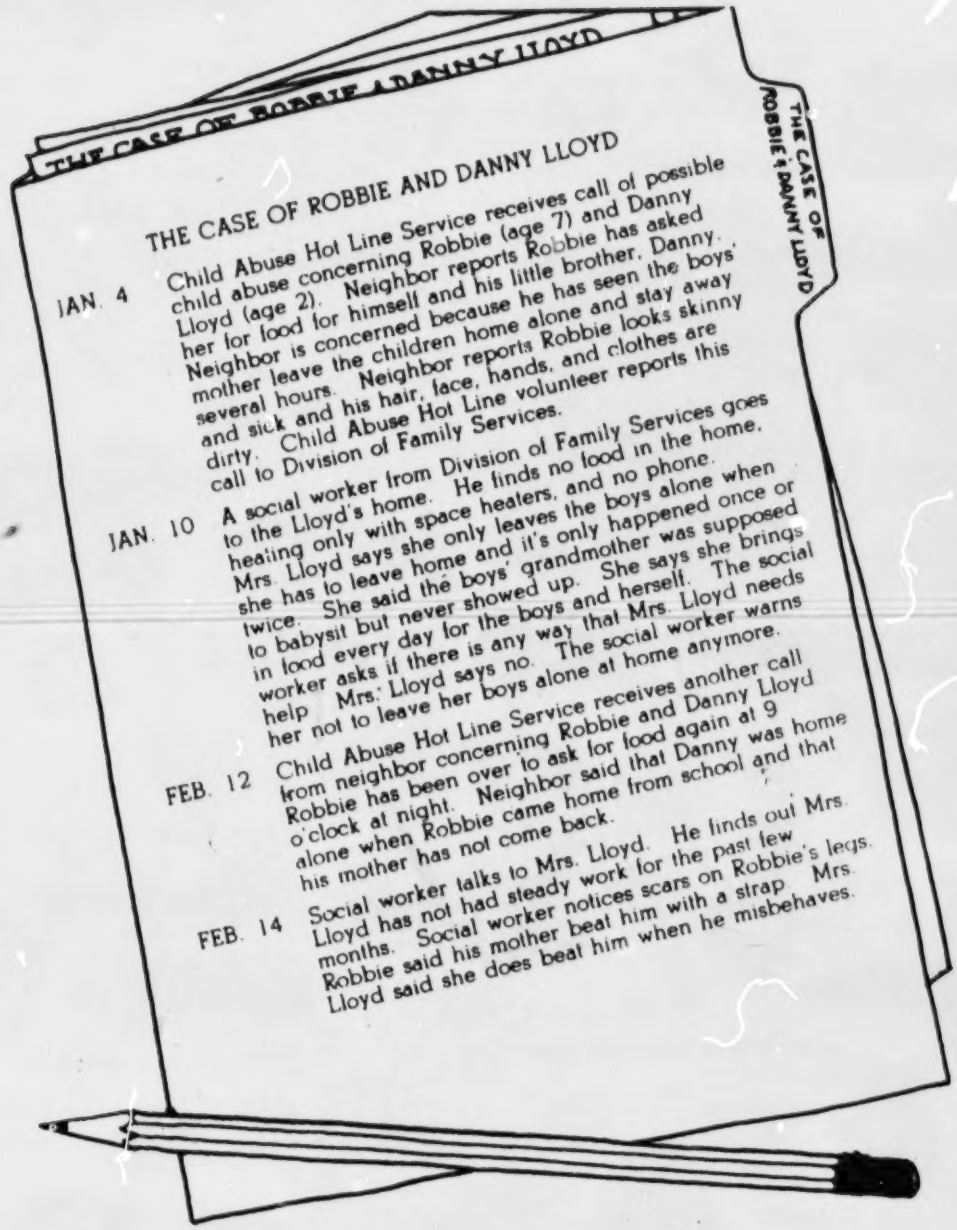
You might want to take time to involve students in thinking about some of these questions. A lawyer or social service worker who handles child abuse cases would be your best source of up-to-date information. A resource person such as a juvenile court worker or social service worker would be able to help with the mock hearing as described in this lesson. This person could provide forms used in your local juvenile court. It may be difficult for the students who play the lawyers, the judge, and the guardian ad litem to think of effective questions to ask during the hearing. It would be helpful if a teacher or a resource person could help them develop questions to ask in preparation for the hearing. A main purpose of this lesson is to involve the students in understanding how juvenile courts handle child abuse cases and to examine the issues involved in the problem of child abuse. If you wish to have students learn more about trial process, see *Courts and Trials*, Second Edition, Law in Action Series.

From *Juvenile Problems and Law*, Second Edition, Law In Action Series. West Publishing Company, 1980.

The Hearing

Juvenile Courts have two hearings to handle child abuse and neglect cases. The first hearing is the adjudicatory, or fact-finding, hearing. The lawyers ask the witnesses questions to bring the facts of the case before the court. The judge makes a decision. If the judge decides it is a case of child abuse or neglect, then the court has the power to do something about it.

The second hearing is the dispositional hearing. At this hearing the court decides what should be done. Usually a social worker who has studied the possible alternatives makes a recommendation to the judge. The lawyers can argue about this recommendation if they don't think it is fair. The judge makes the final decision. At this hearing there is another lawyer called the Attorney Ad Litem, or Guardian Ad Litem. This lawyer is appointed by the court to protect the child's interest during this hearing. (Ad litem means "at the trial" or "for the suit.") This lawyer's job is to make sure that what the court decides to do is in the best interest of the child.


THE CASE OF ROBBIE AND DANNY LLOYD
THE CASE OF ROBBIE AND DANNY LLOYD
THE CASE OF ROBBIE AND DANNY LLOYD
JAN. 4 Child Abuse Hot Line Service receives call of possible child abuse concerning Robbie (age 7) and Danny Lloyd (age 2). Neighbor reports Robbie has asked her for food for himself and his little brother, Danny. Neighbor is concerned because he has seen the boys' mother leave the children home alone and stay away several hours. Neighbor reports Robbie looks skinny and sick and his hair, face, hands, and clothes are dirty. Child Abuse Hot Line volunteer reports this call to Division of Family Services.
JAN. 10 A social worker from Division of Family Services goes to the Lloyd's home. He finds no food in the home. Mrs. Lloyd says she only leaves the boys alone when she has to leave home and it's only happened once or twice. She said the boys' grandmother was supposed to babysit but never showed up. She says she brings in food every day for the boys and herself. The social worker asks if there is any way that Mrs. Lloyd needs help. Mrs. Lloyd says no. The social worker warns her not to leave her boys alone at home anymore.
FEB. 12 Child Abuse Hot Line Service receives another call from neighbor concerning Robbie and Danny Lloyd. Robbie has been over to ask for food again at 9 o'clock at night. Neighbor said that Danny was home alone when Robbie came home from school and that his mother has not come back.
FEB. 14 Social worker talks to Mrs. Lloyd. He finds out Mrs. Lloyd has not had steady work for the past few months. Social worker notices scars on Robbie's legs. Robbie said his mother beat him with a strap. Mrs. Lloyd said she does beat him when he misbehaves.

Note to teacher: Many cities and counties as well as states have a child abuse hotline service which works closely with the Family Services Agency run by the state. Volunteers receive phone calls of possible child abuse and report these calls to the social worker who works for the Family Service Agency.

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BEST COPY AVAILABLE

FEB 15 Social worker reports possible case of child abuse and neglect to juvenile court. Social worker writes up a petition which states the reasons why the case of Robbie and Danny Lloyd is being brought to court.

In The Circuit Court Of Jackson County, Missouri
Juvenile Division
Kansas City, Missouri 64108
625 E. 28th Street

PETITION

IN THE INTEREST OF:

Robert Lloyd/Daniel Lloyd — **NAME**

PETITION NO 64907

1042 Woodacre — **ADDRESS**

FILE NO 5485

4 21 72/1 31 77 — **BIRTHDATE**

The parents or legal guardian of the child/children are:

father deceased / Mary Lloyd

(Father) **(Mother)**

and they reside at:

1042 Woodacre

The person having legal custody of the child/children is:

Mother

Comes now the Juvenile Officer, within and for Jackson County, Missouri, and alleges that the child is within Jackson County, Missouri, and is in need of the care, treatment and services of the court because:

The environment of Robbie Lloyd and Danny Lloyd is harmful to their own welfare because the person legally responsible for their proper care and supervision fails or is unable to properly provide such, in that

Robbie and Danny are left alone at home continually for several hours at a time

there is unsafe heating in their apartment

Robbie shows scars resulting from being whipped with a strap

Mrs. Lloyd does not feed the boys properly

Mrs. Lloyd has not been able to hold a steady job

Petitioner states that this is a physically, psychologically, and emotionally harmful environment for the children to live in

WHEREFORE, petitioner prays the court to sustain this petition and to order appropriate supervision, care, examination, treatment, detention, placement, commitment, change of custody, or other disposition of said child as provided under provisions of chapter 211, R.S.Mo as amended.

A copy of the foregoing petition mailed/delivered this 15th **day of** Feb. **19**79 **to** Legal Aid, **Attorney for said child.**

Barry Horwitz
Juvenile Officer of Jackson County, Missouri

JUVENILE OFFICER

By _____ **DEPUTY**

BEST COPY AVAILABLE

FEB. 16 Social worker takes Robbie and Danny Loyd and places them in foster care until the hearing.

FEB. 19 Mrs. Lloyd receives notice from juvenile court that she must appear for a court hearing.

In The Circuit Court Of Jackson County, Missouri
Juvenile Division
Kansas City, Missouri 64108
625 E. 25th Street
NOTICE TO PARENT/GUARDIAN, CHILD
OF COURT HEARING

Robert & Daniel Lloyd
IN THE INTEREST OF

PETITION NO. 64807
FILE NO. 39288

1042 Woodacre
ADDRESS

4-21-72/1-31-77
BIRTHDATE

Enclosed is a copy of the Petition/Motion to Modify filed in the interest of the above named child(ren). If you have obtained an attorney to represent your child(ren), I would appreciate being notified as to his name. Thank you for your co-operation in this matter.

The Court Hearing is set for:

DAY:
DATE:
TIME:

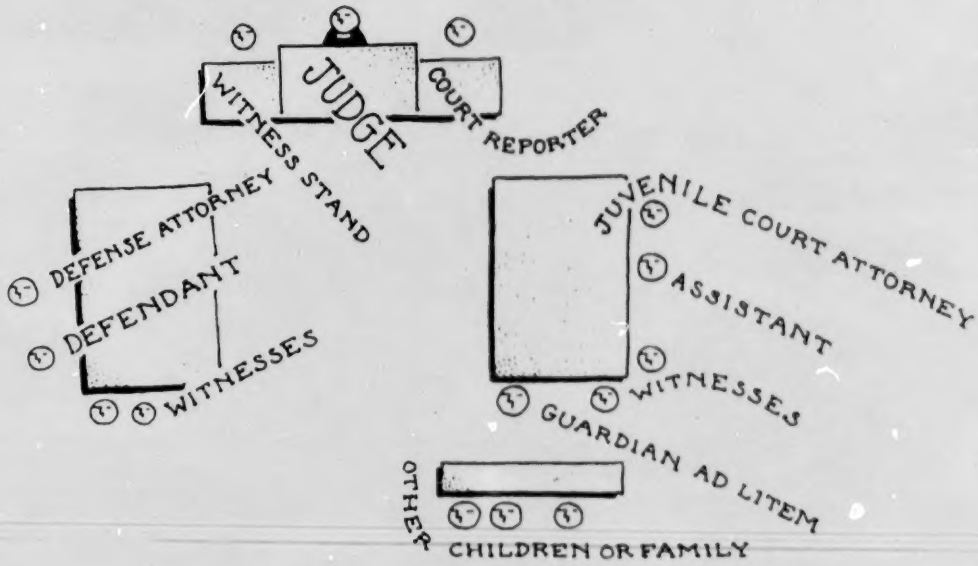
Sincerely,

Administrative Supervisor

FORM 044-COR
3-5M-7/76

Note to students: Fill in the DAY, DATE, and TIME of the hearing with the day, date, and time when your class plans to hold this hearing.

Note to teacher: The juvenile court can take temporary measures to protect the child by removing him/her from the home even before the hearing, if it is determined that it is necessary for the child's safety.



For your hearing you will need people to take the roles of:

Judge
Court reporter
Clerk
Bailiff
Juvenile court attorney/attorney's assistant
Defense attorney/attorney's assistant
Guardian ad litem
Mrs. Mary Lloyd, mother
Robbie Lloyd, juvenile
Mrs. Martha Cooper, grandmother
Mr. Barry Horwitz, social worker

Note to teacher: To make additional learning opportunities, you might have lawyers work in pairs or put on two separate hearings, or have the people who observe the trial use an observation form to look for specific aspects of the hearing.

Remind students that a juvenile court hearing, unlike a trial, is confidential. Student spectators would not be allowed in a real hearing. Students might discuss why juvenile hearings are confidential.

To prepare for the hearing, have all students read through the role descriptions. Then have students choose the roles they want or assign students to roles.

TO PREPARE FOR THE HEARING

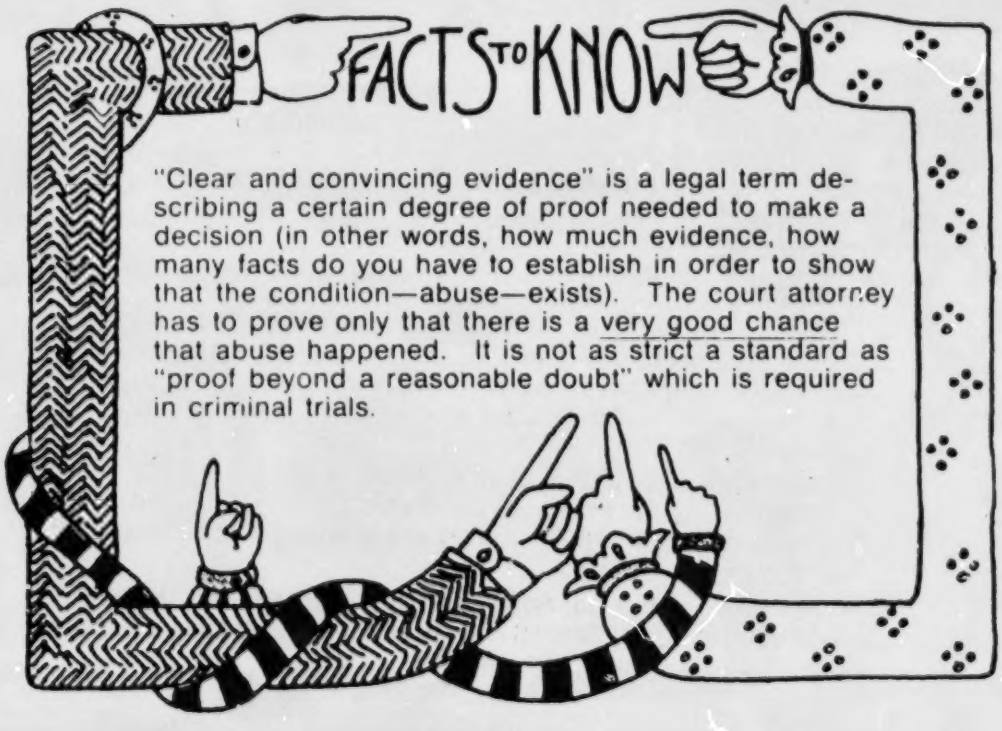
Read through the following descriptions for the hearing. After reading what is expected of each person, decide who will play each role at your hearing.

1. **Juvenile Court Attorney**—one student can be the attorney and one can be the attorney's assistant.

The juvenile court attorney's job is to prove with "clear and convincing evidence" that Robbie's and Danny's situation is harmful to them. You must prove that, for the reasons stated in the petition, the environment Robbie and Danny live in is harmful to their welfare. Your job is not to prove that their mother is guilty of any crime but to prove that the children are in fact being abused and neglected.

To prepare for the hearing talk with the social worker and Robbie. Make sure you understand what their stories are. Think about the questions you plan to ask them during the hearing. Ask the judge to explain the types of questions you are not allowed to ask (page 201).

At the hearing you will call the social worker to the witness stand first. Then you will call Robbie to the stand.


FACTS TO KNOW
"Clear and convincing evidence" is a legal term describing a certain degree of proof needed to make a decision (in other words, how much evidence, how many facts do you have to establish in order to show that the condition—abuse—exists). The court attorney has to prove only that there is a very good chance that abuse happened. It is not as strict a standard as "proof beyond a reasonable doubt" which is required in criminal trials.

2. **Defense Attorney** (for Mrs. Lloyd)—one student can be the defense attorney and one student can be the attorney's assistant.

Your job is to prove that Mrs. Lloyd is taking good enough care of her children, and that the juvenile court has no right to step in and tell Mrs. Lloyd what to do with her children. At the hearing you should try to bring out information that is favorable to Mrs. Lloyd such as:

a. Mrs. Lloyd did not leave her boys alone except a few times when their grandmother didn't show up.

b. Mrs. Lloyd has little money, she heats the apartment, feeds and cares for her children the best she can with the little money she has.

c. Mrs. Lloyd cares about her children and wants them to live with her.

To prepare for the hearing talk to Mrs. Lloyd. Make sure you understand the story she will tell at the hearing. Think about the questions you will ask her and the other witnesses. Ask the judge to explain the types of questions you are not allowed to ask (page 201).

Instructions to

It is your job to present the facts as YOU SEE THEM.

ROBBIE

You are the seven-year-old son of Mrs. Lloyd. This is your testimony. "I am seven years old. My brother, Danny, is two years old. I babysit him when my mom goes out. Sometimes she is gone when I get home from school and doesn't come home until after I go to bed. One day I stayed home from school to take care of Danny. I can do things for myself. I make my own breakfast every day. We don't have much food and I get hungry a lot. My favorite foods are potato chips and candy bars."

MRS. MARY LLOYD

You are the mother of two children. You are accused of abusing and neglecting your children. This is your testimony. "I am thirty-five years old. I work odd hours doing cleaning mostly. The boys' grandmother says she will babysit when I need to go out, then she doesn't show up. What am I supposed to do? We are poor. I do the best I can. I think Robbie is old enough to make his own breakfast and to look after Danny sometimes. I beat Robbie when he misbehaves. I think that is the best way to make him mind."

MRS. MARTHA COOPER, GRANDMOTHER

You are Mrs. Lloyd's mother and the grandmother of Robbie and Danny. This is your testimony. "I can babysit but I never know for sure when I'm supposed to. I can babysit at night but not during the day because of my job. My daughter doesn't like me messing in her business so I don't offer advice unless she asks me. There were a few times I didn't show up for babysitting because I got sick."

SOCIAL WORKER, MR. BARRY HORWITZ

You work for the Division of Family Services. You have been a social worker for 3 years. You investigate reports of child abuse. During the hearing the juvenile court attorney will ask you to give a full report on the case of Robbie and Danny Lloyd. This is your testimony:

"On Jan. 10 I called on the Lloyds to investigate the report made by their neighbor. I found that they lived in a small apartment. Only space heaters were used to heat the apartment. These are dangerous around young children. There was hardly any food and no phone in the home. Mrs. Lloyd said she only left her boys alone at home when it was necessary. She tried to get their grandmother to babysit, but she had no money to pay babysitters. On the first visit I warned her that it was dangerous to leave a seven year old alone with a two year old because in case of an emergency a seven year old would not know what to do. After the second Hot Line report I called on Mrs. Lloyd again. I found nothing changed in the apartment. I noticed scars on Robbie's legs that looked like they were made with a strap or an extension cord. Mrs. Lloyd admitted she beat Robbie with a strap to punish him. Mrs. Lloyd told me to mind my own business and leave her alone."

At this time reread the Report, read pages 193-4, and read over your testimony at the hearing, page 200. Based upon information contained in these readings decide what recommendation you will make to the judge concerning what should be done in this case. Write down your recommendation: include the reasons why you decided as you did. Before the hearing give a copy of your recommendation to the judge. Be prepared to explain your recommendation at the dispositional hearing.

In cases of child abuse and neglect a court can:

- —order counseling for one or more family members
- —order classes in parenting and child care
- —allow a child to stay with the family under supervision of a social worker
- —place a child in a foster home for a short time
- —place a child in a foster home for a long time
- —commit child or family member to be evaluated by doctors
- —terminate (end completely) parental rights and have child adopted by another family

JUDGE

Your job is to listen to all the testimony. You sustain or overrule any objections made by the lawyers. Lawyers may not ask questions that:

1. Browbeat the witness
2. Are leading questions, such as, "You do think this boy is abused, don't you?"
3. Are biased questions, such as, "How can a mother like you be responsible for a child?"

(Before the hearing, explain to the lawyers that they are not allowed to ask these kinds of questions.)

After the lawyers have asked the witnesses questions, you may also question the witnesses or the lawyers if you don't understand something. It is your responsibility to decide if Robbie and Danny are being abused and neglected. Make your decision based on facts that are brought out at the hearing.

If you decide Robbie and Danny are abused and neglected, you must then decide what needs to be done about it. You will make this decision after you read and listen to the recommendation made by the social worker. The possible choices are on page 66.

Note to teacher: A "court referee" or "court officer" might act as judge in some juvenile courts.

For more information on rules of questioning and evidence see *Courts and Trials,* Second Edition, Law in Action Series, West Publishing Co., 1980.

THE COURT REPORTER

It is your job to take down every word that is said by the lawyers, judge, and witnesses during the hearing. In actual hearings court reporters have machines they use to take down every word quickly. The words you take down become a transcript. If, later on, someone had a question about the case, they would look at the transcript. Since you won't be able to use this machine, try to locate a tape-recorder that you could use the day of the hearing.

THE BAILIFF

Your job is to keep order in the courtroom. You take care of misconduct or an emergency; for example, if there is any unruly behavior or if someone faints or gets sick.

THE CLERK

Your job is to swear in the witnesses when they come up to the witness stand. It is also your job to handle any evidence or documents.

THE GUARDIAN AD LITEM

You are the lawyer who represents only the child. During the dispositional hearing when the court decides what should be done with the child, it is your job to make sure that the action taken is in the best interest of the child. You can ask the lawyers or any witness questions during the disposition part of the hearing.

Note to teacher: Many juvenile courts do not have either a bailiff, a clerk, or both. Because it is an informal hearing, the judge or referee would handle documents and evidence and swear people in. Since some courts do have both, we have included these parts in order to have two more students involved in the role play.

A MOCK JUVENILE HEARING

I. THE ADJUDICATION

Bailiff: Please remain seated. The court of Judge _____ will come to order.

Judge: What do we have on the docket today?

Juvenile court attorney: This is the matter of Robert and Daniel Lloyd. The people present in the courtroom are (name all people present in courtroom who are involved in the case.)

The children, Robert, age 7, and Daniel, age 2, are in the courtroom. Shall I read the charges made in the petition?

Defense attorney: Yes.

Juvenile court attorney: (Reads the petition. Then says) Do you admit or deny this petition?

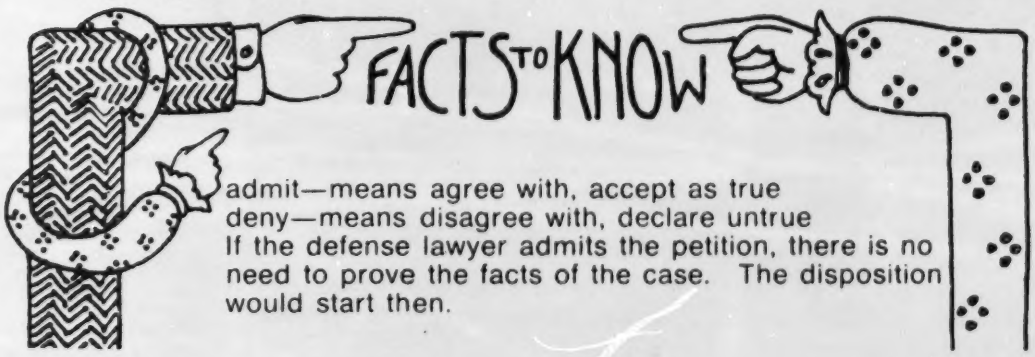
Defense attorney: I deny the petition.

Juvenile court attorney: I call _____ to the stand.
(name of first witness)

Judge: Be sworn in by the clerk.

Clerk: Hold up your right hand. Do you swear that the testimony you give in this cause will be the whole truth and nothing but the truth?

The juvenile court attorney begins questioning his or her witnesses. Then the defense attorney can cross-examine these witnesses. After all the witnesses for the juvenile court attorney have testified, the defense attorney may call witnesses. Each witness must be sworn in by the clerk before taking the stand.



admit—means agree with, accept as true
deny—means disagree with, declare untrue
If the defense lawyer admits the petition, there is no need to prove the facts of the case. The disposition would start then.

Judge: (After hearing the testimony given by the witnesses and asking them questions of your own, you must decide if Robbie and Danny have suffered child abuse and neglect. State your decision to the court.)

If the judge decides that this is a case of child abuse, the hearing will move directly into the second part—the DISPOSITION. If the judge decides that there is no child abuse the hearing is over.

II. THE DISPOSITION (usually same time)

Juvenile court attorney: I want to call the social worker back to the stand. Have you made a careful study of the case of Robbie and Danny Lloyd? Are you ready to make a recommendation to the court?

Social worker: Yes, I have studied the case carefully. In the past month I was able to help Mrs. Lloyd find a steady job as a waitress. She will work in the evenings when her mother can babysit with the boys. The grandmother has agreed to do this. Mrs. Lloyd will have more money now to care for her family. I am still concerned that her way of punishing her boys could be harmful to them. Also of concern is the fact that Mrs. Lloyd does not know the value of good eating habits. She may not use her money to buy nutritious food for the boys, but rather may buy snack foods. She needs to purchase a better, safer heater for the apartment. She says she wants the boys with her. I am recommending _____ (at this point explain your recommendations to the court).

Guardian ad litem: (Questions the social worker to make sure that the recommendations are in the best interest of the boys.)

At this point, each of the lawyers and the judge may ask questions of anyone involved in the hearing. The mother, the grandmother, and Robbie can be questioned to make sure they are willing to follow through on their responsibilities.

Judge: (At the end of the discussion, the judge states the disposition.)

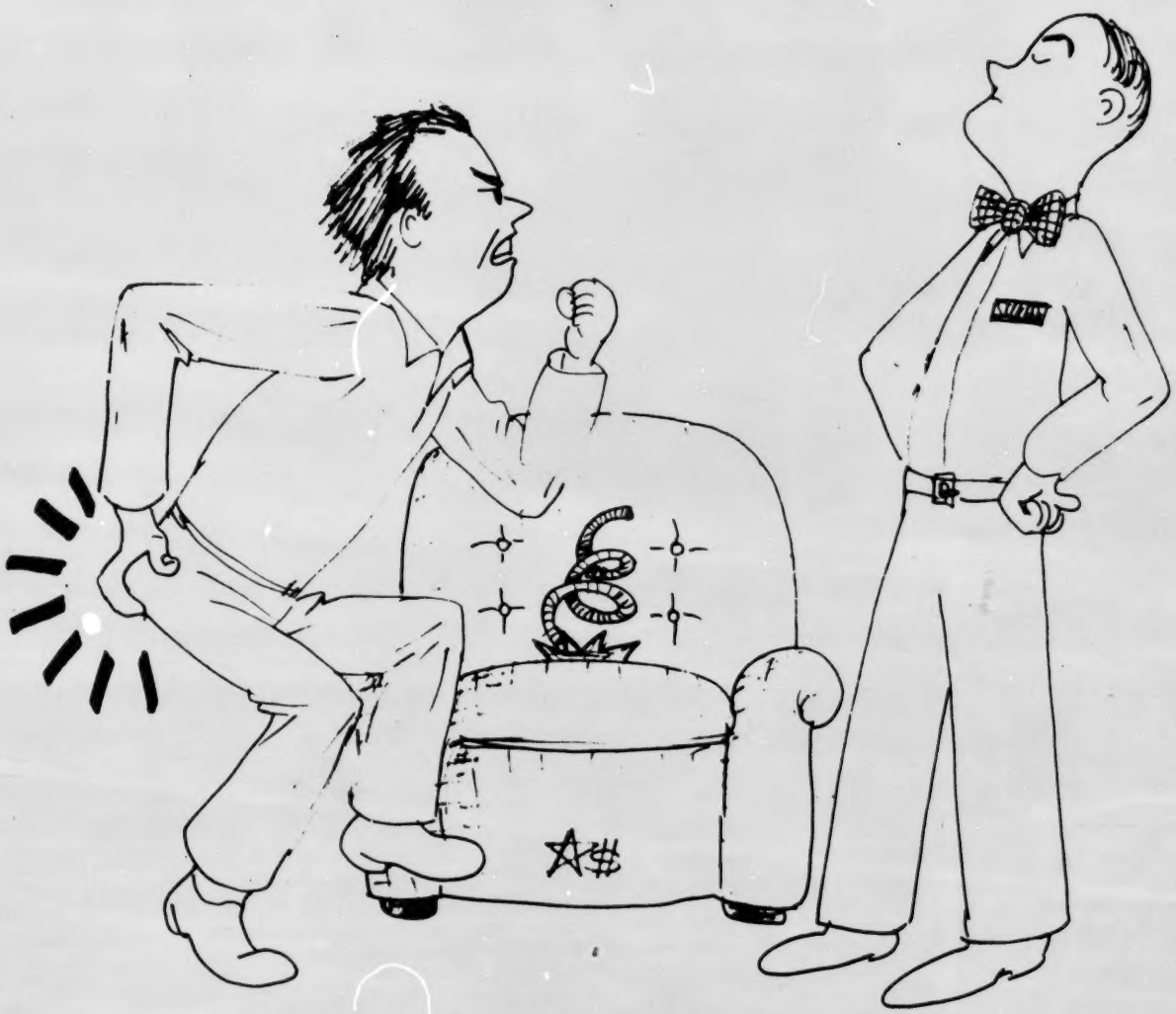
"It is therefore ordered that the juvenile be _____

_____

DEBRIEFING

1. Do you think the hearing was a fair way to resolve (work out) this problem of possible child abuse and neglect? Did you feel the judge's decision was fair to the children and to the parent? Explain your reasons.
2. Were all the facts necessary to decide the case brought out at the hearing?
3. If you had been the neighbor would you have called the child abuse Hot Line Service? Explain why or why not.
4. Social worker, explain the reasons you had for making the recommendation that you did. Explain any difficulties you had.
5. What if you were the judge in this case—what do you think about the way Mrs. Lloyd handled her boys? For example, do you think it was all right for her to leave Robbie and Danny at home alone?
6. What kind of help do you think it is most important for the Lloyd family to get?
7. What do you think needs to be done to help prevent child abuse and neglect?
8. What were some important things you learned from putting on your own mock juvenile hearing?

PRACTICAL/CONSUMER LAW



TITLE: Consumer Rights and Responsibilities
CATEGORY: Practical/Consumer
DESCRIPTION: A brief historical resume of federal laws and an extensive outline for handling consumer complaints and contracts have been extracted from several sources providing supplementary material for teaching consumer law.
AUTHOR/EDITOR: Linda K. Jones, Columbus/Muscogee Workshop, 1978; and, Consumer's Resource Handbook, The White House Office of Special Assistant for Consumer Affairs, Consumer Information Center, Department 532 G, Pueblo, Colorado, 81009. December, 1979, pgs. 1-9. Single copy free.

TO THE TEACHER:

This is not a teaching unit. The information can easily be developed into an instructional unit in consumer law, American History, personal finance, etc.

It is suggested that qualified consumer counsellors and/or lawyers be consulted to clarify specific issues.

CONSUMER RIGHTS AND RESPONSIBILITIES

Prepared by: Linda K. Jones
August, 1978
Columbus, Georgia

TO THE TEACHER: Most of the time, there aren't any real difficulties with the contracts we make and the obligations of the contracts are fulfilled to the satisfaction of both parties. But sometimes, a consumer gets "burned". A consumer should know the legal rights and the responsibilities which go along with a contract. Consumers who get "burned" must know what kinds of things can be done to correct the problems.

OBJECTIVES: Students will be able to:

1. define contract and analyze examples of a variety of contracts made by consumers;
2. cite examples of major kinds of problems with which consumers commonly come in contact;
3. describe actions which may be taken by a consumer who purchased a defective product;
4. cite agencies, aids, and resources available, locally and statewide.

Although the Latin words caveat emptor (let the buyer beware) still apply, the consumer has much more protection than 15 years ago. Today, many rules and laws protect a consumer (caveat vendor) if the consumer is aware and knowledgeable of these.

John F. Kennedy stated in his 1962 message to Congress that consumers have four basic rights:

1) The right to safety -- to be protected against the marketing of goods which are hazardous to your health, life, or limb.
2) The right to be informed -- to be protected against fraudulent advertising, labeling, or grossly misleading information about products, and to be given the facts you need to make an informed choice in the market place.
3) The right to choose -- to have, as far as possible, access to a variety of products and services at reasonable prices.
4) The right to be heard -- to be assured that your interests as a consumer will get a sympathetic hearing by the government, and that the laws that are supposed to protect you will be enforced.

ONLY WHEN YOU KNOW THE RIGHTS WILL YOU GET THESE RIGHTS.

PROTECTION PROVIDED BY THE FEDERAL GOVERNMENT

1. The 1906 Pure Food and Drug Act -- prohibits mislabeling of the contents of food, liquor, and medicine containers.
2. The 1907 Agricultural Meat Inspection Act -- provides for federal regulation and inspection of meat packing plants engaged in interstate commerce for sanitary plant conditions and meat cleanliness.
3. The 1914 Federal Trade Commission Act and later amendments, state broadly that "unfair methods of competition in commerce are hereby declared unlawful" and "unfair or deceptive acts or practices in commerce also are illegal".
4. The 1938 Food, Drug, and Cosmetic Act strengthened food labeling requirements and extended strict requirements to advertising and labeling of cosmetics. The act also required that drug advertising and labels include "all material facts" about a drug, such as instructions for use, medical conditions making its use unwise, and differences of established medical opinion on its effectiveness.
5. The 1939 Wool Products Labeling Act -- requires disclosure of the true composition of all types of wool products at every step along their way from the sheep to the user.
6. The 1951 Fur Products Labeling Act -- protects the public against false labeling and advertising of furs.
7. The 1953 Flammable Fabrics Act and especially later amendments, empowered the Secretary of Commerce to ban the sale of certain items of clothes and household furnishings, ranging from flame-prone scarves to flammable bedding, if the Secretary determines that a particular product presents an "unreasonable risk of death, personal injury or significant property damage".
8. The 1958 Textile Fiber Products Identification Act -- establishes comprehensive standards for labeling and advertising clothes and other textile products making possible comparison of the characteristics of materials when you shop.

9. The 1960 Federal Hazardous Substances Labeling Act and later amendments -- establishes a list of hazardous household substances subject to stringent labeling standards. You can now instantly identify extremely flammable, corrosive, or highly toxic substances by the designation "DANGER" on the label. The words "WARNING" or "CAUTION" alert you to less extreme chemical hazards.
10. The 1966 National Traffic and Motor Vehicle Safety Act -- the goals of this law are to eliminate unsafe automobile manufacturing practices, to establish safety standards in the design of automobiles, and to require the development and installation of certain lifesaving equipment in motor vehicles, and created the National Highway Safety Bureau, which is concerned with all aspects of automobile safety. Amendments in 1974 further required auto manufacturers to repair safety defects promptly and without charge, and required them to set safety standards for school buses.
11. The 1966 Child Protection Act and the 1970 Toy Safety Act -- prohibits the sale of products that are dangerous to the health and safety of children -- even if such products have warnings on their labels.
12. The 1966 Fair Packaging and Labeling Act - requires manufacturers of a wide variety of consumer products to state clearly the net quantity of contents on the package's principal display panel; and calls for the elimination of packages of consumer goods (e.g., breakfast cereals) that are unnecessarily slack filled (the product does not fill the package, or the package has too much "air") and requires that the name and address of the product's manufacturer or distributor be included on the package. It bans the use of such meaningless terms as "Giant Quart" and "Jumbo Gallon" -- as well as phony "cents off" and come-ons and non-economical "economy size" packages.
13. The 1966 Freedom of Information Act, and 1974 amendments -- establishes the principle that the public has a right, with certain exceptions, to information collected and kept by federal government agencies.
14. The 1967 Wholesome Meat Act -- requires states to regulate meat processors in their jurisdictions at least as strictly as the federal government does, and authorizes federal aid to states for inspecting meat plants doing intrastate (with the state) business only.
15. The 1968 Wholesome Poultry Products Act -- extends strict federal poultry inspection standards for poultry plants not doing interstate business.
16. The 1968 Radiation Control for Health and Safety Act -- sets performance standards for certain electronic products and limits on the amount of radiation that may be emitted by such products as microwave ovens and color television sets.
17. The 1968 Natural Gas Pipeline Safety Act -- sets safety standards for transmitting, or shipping gas through interstate pipelines -- as the public's protection against explosions.

18. The 1968 Consumer Credit Protection Act (also called the Truth in Lending Law) -- requires most categories of lenders to disclose the true annual interest rate on virtually all types of loans and credit sales as well as the total dollar cost and other terms of a loan, prohibits a variety of cruel and deceptive lending practices and gives the borrower the right to cancel most types of credit transactions in which your home is used as collateral for a loan, prohibits anyone from sending you a credit card you have not requested and provides other kinds of protections against card thieves running up bills in another person's name. It also limits the amount of your wages which may be garnisheed (withheld by your employer at the order of a court for repayment of an overdue debt).
19. The 1968 Interstate Land Sales Full Disclosure Act -- requires all large land sales promoters to furnish prospective buyers a detailed and meaningful report on the land, and spells out buyers' rights in the transaction.
20. The 1970 Poison Prevention Packaging Act -- requires childproof packaging for medicine and household chemicals to reduce risk of accidental poisoning.
21. The 1971 Fair Credit Reporting Act -- gives users of credit, buyers of insurance, or the applicants for a job, the right to learn the contents of their files at any credit bureau. You have the specific rights to:
    1. Be told the name and address of the credit bureau or similar agency anytime you are denied credit, insurance, or employment;
    2. Find out who has received information from your file;
    3. Have your file treated confidentially, except for legitimate purposes;
    4. Force changes in the file if it is inaccurate, and have the credit bureau notify, at no cost to you, recipients of false reports that have been made;
    5. Sue anyone infringing on these rights.
22. The 1972 Motor Vehicle Information and Cost Savings Act (also known as the "Better Bumper Law") -- establishes standards for car bumpers to reduce damage in low-speed collisions, provides for federal diagnostic centers to promote better auto diagnostic facilities, and directs Transportation Departments to conduct research on the comparative fragility of automobiles and to give the results of that research to the public. The act also prohibits used car dealers or private individuals from turning back odometers to hid the true mileage a car has been driven and requires dealers to give each buyer a written "Verification" of the mileage if the mileage is known.
23. The 1972 Consumer Product Safety Act -- establishes a five-member Consumer Product Safety Commission, which collects, investigates, and disseminates information relating to death, illness, and injuries associated with consumer products, conducts studies on consumer product safety, develops safety test methods and devices, tests products, and assists public and private organizations in developing and enforcing product safety standards and test methods.
24. The 1974 Fair Credit Billing Act -- an amendment to the Truth in Lending Law, effective in late 1975, protects charge account customers

against billing errors; permits credit card customers to use the same legal defenses against banks or other "third party" credit card companies as they previously had against merchants in the event an item bought on a credit card and costing more than $50 turns out to be defective.

25. The 1974 Consumer Product Warranty and Federal Trade Commission Improvement Act -- requires that all provisions of any warranty be explained clearly and in simple language on (or close to) the product when you purchase it. The explanation must include: what the warrantor will do if something fails; who will pay for what; exactly how you can get the warranty honored.

PROTECTION PROVIDED BY YOUR STATE OR CITY

States and cities also have laws and regulations protecting consumers against such practices as:

1. Charging usurious interest rates on loans (the rates that are considered usurious vary from state to state).
2. Charging you for extra weight in meat and poultry which has been injected with water.
3. Shutting off your gas or electricity or telephone over a weekend because of late payment of your bill.
4. Changing the terms of an advertised guarantee when you come to the store to look over the item.
5. Failing to post prices of prescription drugs in drugstores.
6. Stating that an item has been "marked down" when it normally has been priced at its current level.
7. Presenting you with non-itemized repair bills.
8. Selling used goods (such as demonstrator cars and worn furniture floor models) as new.

The following is an excellent resource identifying the process of resolving consumer problems. Each of the services identified are available in some form in Georgia.

The following is escerpted from Consumer's Resource Handbook, Section 1, pages 1-9, see p. for citation and information about securing a copy.

SECTION 1

HANDLING CONSUMER COMPLAINTS

An Ounce of Prevention . . .

This section gives step-by-step information on how to resolve consumer complaints. We don't feel it would be complete, however, unless it contained some information on how to avoid problems before they occur.

AN OUNCE OF PREVENTION CAN SAVE A POUND OF AGGRAVATION.

Here are some questions to ask before making a purchase or signing on the dotted line. View the following as a "consumer checklist". If you are in doubt when answering any of these questions, it would be wise to look elsewhere in shopping for goods or services.

___ Does the advertiser promise more than the product can reasonably deliver? Beware of claims that seem too good to be true.
___ Have you comparison shopped? A little time spent comparing prices and quality for goods and services can often save a lot of money and trouble.
___ According to your local consumer protection agency or Better Business Bureau, does the company have a good track record for reliability?
___ If you are seeking professional assistance, have you asked about fees, services, qualifications and licenses?
___ Have you checked consumer product testing magazines and other informative sources to see how the experts rate the product you are considering?
___ Do you feel you are being pushed too fast to buy or to sign a contract?
___ Do you understand the contract and your full obligation -- finance charges, total price, and what happens if you miss a payment or want to pay off in advance? If necessary, take the contract home or seek legal advice. Get any oral promises in writing.
___ Is there a warranty? Does it cover parts and labor -- and for how long? Where do you have to take the item for repair?
___ What are the company's policies for complaint handling?
___ Does the company give refunds?

Of course, once in a while even the most careful shoppers find themselves buying products that don't work right, services that don't serve well

and merchants and manufacturers who are less than enthusiastic about resolving difficulties. However, most businesses depend on satisfied customers to stay in business. Reputable firms will make an honest effort to resolve problems -- but first you must let them know a problem exists.

So, when consumer problems do arise -- as they will -- don't just sit back and take it (or be taken); follow the basic steps outlined below.

1. IDENTIFY THE PROBLEM and what you believe would be a fair settlement of your complaint (i.e., your money back, a repair, etc.); have documentation available to substantiate your complaint (i.e., sales receipt, repair order, warranty, cancelled check, etc.).

2. GO BACK TO THE PERSON WHO SOLD YOU THE ITEM or performed the service and calmly state the problem and what action you would like taken. If this person is not helpful, ask to see the supervisor or manager. Repeat the complaint. Most problems are resolved at this level; chances are yours will be too.

3. IF YOU ARE NOT SATISFIED WITH THE RESPONSE, DON'T GIVE UP. If the company operates nationally or the product is a national brand, write a letter to the president or the consumer official of the company.

4. IF YOU ARE NOT SATISFIED WITH THE COMPANY'S RESPONSE to your letter or never receive a response, you may now wish to contact outside sources for help. These include:

Action Lines	AFL-CIO Community Services
Better Business Bureaus	Consumer Action Panels
Consumer Credit Counselin-	Federal Agencies
Government Services	Legal Aid and Legal Services
Media Programs	Pre-paid Legal Services
Private Attorneys	Private Consumer Organizations
Public Interest Law Centers	Small Claims Courts
State Licensing Boards and Bureaus	State/Local Consumer Offices

SAMPLE "COMPLAINT" LETTER

First check to see if the company has a local office. If it does, call and ask for the name and address of its national president. If there is no local listing, Standard & Poor's Register of Corporations, Directors and Executives is a good reference source which lists over 37,000 American business firms. The Thomas Registry lists thousands of products and their manufacturers. This book can also be found in many public libraries.

Your letter should include:

* State your purchase
* Name Product and serial or model number or service
* Include date and location of purchase; other details
* State problem
* Give history of the problem
* Ask for satisfaction
* Enclose copies of all documents
* Ask for action within reasonable time
* Include your address, work and home phone numbers

KEEP COPIES OF YOUR LETTER AND ALL RELATED DOCUMENTS AND INFORMATION

YOUR LETTER

* Include your name, address and home and work phone numbers.
* Type your letter, if possible. If it is handwritten, make sure it is neat and legible.
* Make it brief and to the point. Include all pertinent facts (i.e., date of transaction, item involved, store) and what you believe would be a fair and just settlement of the problem. Attach documentation to support your case; be sure to send COPIES, not originals.
* Remember, the person reading your letter is not personally responsible for your problem, BUT may be responsible for resolving it. Therefore, avoid writing a sarcastic, threatening, or angry letter; it may lessen your chances of getting the complaint resolved.
* Keep a copy of the letter for your records.

WHERE TO GO FOR ASSISTANCE

State, County, and City Consumer Offices; What they are and what they do:

If you are not satisfied with a company's response to your complaint, a good place to go first with an inquiry or a complaint is to your local consumer office if there is one in your area. Local consumer offices can be particularly helpful since they can be contacted easily by phone or in person, and are familiar with local businesses and laws. Be sure to take all your sales slips, other sales documents, and all correspondence with the retailer and manufacturer when you call or visit your local agency.

If there is no consumer office where you live, contact a state consumer office. In Georgia call Tie-Line, 800-656-7000.

If you have a consumer problem with a business transaction occurring in a state other than where you reside, you should contact the state where you conducted your business, if possible.

OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS

If you have a problem with professional or occupational services, you may be able to get help from a state licensing or regulatory board.

The licensing of professions and occupations was started by state legislatures for the protection of the public health, safety, and welfare and to guard the public from incompetency and fraud.

State boards set licensing standards, set rules and regulations; prepare and conduct examinations; issue, deny or revoke licenses; bring diciplinary actions; and handle consumer complaints.

If you contact a state board for help, it will usually bring your complaint to the attention of its licensee and it will seek a satisfactory resolution to your problem. If necessary, the board will conduct an investigation, and take disciplinary action against the licensee in the form of probation, or license suspension or revocation.

Many boards will also have consumer education materials to help you in selecting a professional or tradesperson.

BETTER BUSINESS BUREAUS (BBBs)

BBBs are non-profit organizations sponsored by private businesses. There are 147 BBB locations across the U.S. today, sponsored by local and national business. While BBBs vary from place to place, most offer a variety of basic services. These include: general information on products or services, reliability reports, background information on local businesses and organizations, and records of companies' complaint handling performances. Depending on the policy of the individual BBB, it may or may not tell you the nature of the complaint registered against a business, but all will tell you if a complaint has been registered. BBBs accept written complaints and will contact a firm on your behalf.

BBBs attempt to settle consumer complaints against local business firms. A BBB considers a consumer complaint settled when:

1. The customer receives satisfaction.
2. The customer receives a reasonable adjustment -- in other words, gets what was paid for.
3. The company provides proof that the customer's demands are unreasonable or unwarranted.

The BBB does not: judge individual products or brands, handle complaints concerning the prices of goods or services, or give legal advice.

More than 100 of the 147 BBBs offer binding arbitration to those who ask for it, and others are beginning programs. Arbitration is a way for people to settle a dispute by having an impartial person or board (people who have nothing to gain or lose from the decision) decide the outcome of the dispute. In arbitration, parties are bound by the decision and it can be enforced by the courts. Do not enter arbitration lightly since you must follow the decision that is made.

BBBs also handle false advertising cases. Your local BBB looks into local advertising, while the BBBs' National Advertising Division (NAD) checks out complaints about national advertising.

Four BBBs in Georgia are:

Better Business Bureau
212 Healey Building
Atlanta, Georgia 30335
Phone: 404-688-4910

Better Business Bureau
P.O. Box 2085
Augusta, Georgia 30903
Phone: 404-722-1574

Better Business Bureau
P.O. Box 13956
Savannah, Georgia 31402
Phone: 912-354-7521

Better Business Bureau
P.O. Box 6889
Columbus, Georgia 31906
Phone: 404-568-3031/3030

MEDIA PROGRAMS

More than 100 local newspapers in 48 states, plus Washington, D.C., and 50 radio-TV stations in 28 states offer "Action" or "Hot Line" services where consumers with problems can get help. They often select the most severe problems, or those that are most representative of a number of complaints.

LEGAL AID AND LEGAL SERVICES

Legal Aid and Legal Services offices help people who cannot afford to hire private lawyers, and who meet financial eligibility requirements.

These offices give legal assistance with problems such as landlord-tenant; credit; utilities; and family issues, such as divorce and adoption. They also work on cases involving social security, welfare, unemployment, and workers' compensation.

PREPAID LEGAL SERVICES

Legal services are now available to more people through prepaid legal plans -- a form of insurance where consumers, for a small monthly fee, receive certain basic legal services. More than 2,000 plans are on file with the Department of Labor.

Most plans provide broad coverage for routine personal legal services, such as family matters (including divorce, custody and adoption) real estate sales or purchases and landlord-tenant matters; consumer credit and debt problems; wills and probate; misdemeanors; and traffic matters. Felony criminal matters are often excluded. A typical plan costs $5 to $8 per month for family coverage.

Some insurance companies have entered the field and consumer and labor organizations are supporting prepaid legal services as an employee fringe benefit. All of these groups believe that basic legal services can be provided at a reasonable rate on a broad basis.

PUBLIC INTEREST LAW CENTERS

Public interest law cneters are non-profit, tax-exempt groups offering legal representation to consumers and others who would not otherwise be represented before Federal agencies or the courts.

There are nationally more than 100 public interest law centers involved in consumer, minority, women's, handicapped, low-income, and environmental issues. Generally, they do not handle individual cases; rather, they represent the views of a number of citizens.

A national clearinghouse for public interest law firms is operated by the Council of Public Interest Law, 1250 Connecticut Avenue, N.W., Washington, D.C., 20036. You may also consult your local consumer office, phone book, or library.

PRIVATE LAWYERS

Private lawyers are legal agents for clients in legal and business transactions. Lawyers can manage your legal affairs, give legal advice, and present your case in court.

Usually, they do not take cases that involve small sums of money. These are better suited for small claims courts.

PRIVATE CONSUMER GROUPS

Private consumer groups operate in all 50 states at local, state, and national levels.

In most cases, these groups are made up of individual consumer members who join together to advocate consumer interests.

Some consumer groups help individual consumers with complaints. Others are dedicated to serving the broad needs of special population groups such as the elderly, women, minorities, low-income individuals and workers. They represent consumers by using their groups to focus consumer thought and energy on critical consumer issues to bring about needed improvements in the marketplace. Additionally, many provide consumer education and information. Georgia has many groups in this category.

AFL-CIO COMMUNITY SERVICES

The American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) offers a number of community services to its millions of union members across the Nation. Two of these are consumer and debt counseling.

Consumer counseling is provided to help union members protect their savings and learn how to handle consumer problems.

CONSUMER CREDIT COUNSELING SERVICES

If you have problems budgeting your money, you may want to consider seeking consumer credit counseling. Many organizations, including credit unions, family service centers and religious organizations, offer consumer credit counseling services.

Another source of help is the Consumer Credit Counseling Service (CCCS), sponsored by the National Foundation for Consumer Credit, Inc., which is supported by banks, credit card companies, finance companies and other financial institutions. CCCS has 219 offices across the Nation, with services available in all states except Alaska, Arkansas, Delaware and Mississippi.

INDUSTRY CONSUMER PROGRAMS

Several industry associations can help you with complaints or provide information. These associations are formed by individual businesses in various industries which join together to assist with business problems and promote the industry. While they do not handle consumer complaints, they usually offer consumer information. Trade associations have been established in just about every field of business and consumer interest, and local, regional and national groups number around 40,000.

AUTOMOBILE, FURNITURE, AND MAJOR APPLIANCES CONSUMER ACTION PANELS

Consumer Action Panels (CAPs) are special offices established by three industries to help solve problems between consumers and industry members.

If you have problems with a car, furniture, or appliances, you can turn to a CAP for help. But remember, contacting a CAP is not the first step in solving a consumer complaint.

A CAP should be contacted only if you have been unsuccessful in getting your complaint settled by the retailer, dealer or manufacturer.

HOMEOWNER PROTECTION PROGRAMS

Most builders provide new homeowners with a one-year guarantee on building materials; workmanship; and home accessories, such as refrigerators, stoves, dishwashers and heating and air-conditioning equipment.

Local and, in some cases, state Home Owners Warranty Councils have been established throughout the country. In order to determine if a HOW Council has been established in your area, contact the local or state home builders association nearest you. Or ask your builder to investigate the HOW program in your area.

SECURITIES EXCHANGES AND ASSOCIATIONS

National securities exchanges and associations are membership organizations for securities brokers and dealers and serve as market places for the trading of securities. They are registered with the SECURITIES AND EXCHANGE COMMISSION (SEC) and are responsible for ensuring that their members comply with SEC rules and their own rules. They are also responsible for maintaining fair and orderly markets for the securities traded. These organizations receive complaints from individual investors about their members and about the securities traded on their floors. They investigate these complaints, and they may discipline their members for violations of rules or suspend trading in securities.

CONTRACTS

A variety of contracts can be secured from local businesses, etc. Law-related education, consumer and business law texts elaborate on the following information and provide case studies.

Elements of a Contract

A contract exists whenever two or more parties exchange promises that each will do something for the other. One of the most important principles of the law is that in order for a contract to be valid, it must be reasonable. Agreements made in jest, or in offhand conversation, are not usually valid contracts.

An agreement in itself is not necessarily a valid contract. Every valid contract must contain certain features: there must be mutual assent, and consideration. In addition, the individuals must be legally competent, and whatever they intend to accomplish by the contract must be legal. It must also be carried out within the specified period of time.

Mutual assent: both parties agree to the terms of the contract.
Legal competence: the law recognizes the persons have enough sense to know what he or she is doing at the time the contract is made. If the person is not legally competent, the contract may be declared invalid.
Lawful intent and specified period of time: whatever the parties are agreeing to do must be legal and a period of time must be specified within which the agreement must be carried on.

Express and Implied Contracts

Express contract: both parties indicate that they are entering into an agreement with each other.
Implied contract: both parties to an agreement understand, without any express words, that a contract is in existence.

IF YOU ARE SIGNING A CONTRACT, BE SURE YOU:

1. Get a copy of any contract you have signed;
2. Find out if there are any provisions for cancellation of the contract;
3. Be sure that you understand exactly what the contract means;
4. Be sure you are not pressured into signing any contract;
5. Be sure that all blank spaces have been filled in or crossed out in permanent ink. NEVER LEAVE BLANK SPACES IN A CONTRACT.
6. Be sure there are no tricky clauses in the fine print.

WHAT IS A WARRANTY WORTH?

When a person buys a product, it often comes with a warranty or a guarantee. As with contracts, the warranty may be express or implied.

An express warranty: specifies just what is covered by the guarantee. It may be written or spoken.

An implied warranty (warranty of merchantability): is a guarantee that the product is what it's supposed to be, and that the seller is authorized to sell it. If an implied warranty is broken, the consumer may sue to have the contract cancelled, the item replaced, or money damages paid to him/her.

Disclaimers - Under some conditions, warranties can be disclaimed; that is, the seller denies certain responsibilities.

TITLE: Landlord-Tenant Legal Relationships
CATEGORY: Consumer Law
DESCRIPTION: A brief outline of an introduction to students of minimum essential information regarding landlord-tenant responsibilities.
AUTHOR: Pam B. Tate, Muscogee County School District, Workshop, 1978.

TO THE TEACHER:

The student will be able to:

1. develop a list of questions she/he would ask a prospective landlord about the rental property.
2. evaluate the conditions of the rental property and decide if it is satisfactory to his/her needs.
3. read/interpret a rental contract to identify the areas that pertain specifically to his/her obligations and those of the landlord.
4. identify living conditions that are not meeting the requirements of his/her local housing code.
5. locate professionals and agencies who can assist him/her in settling disputes with landlords.

PRELIMINARY PREPARATION

The following lessons can be taught as a short segment of the broader topic of consumer law. Since most students' initial move into separate housing will be as renters, not purchasers, of property, it is significant to inform them of procedures and rights concerning landlords and tenants.

The student should have already been taught the economic techniques that would include budgeting to determine the maximum rental fee he/she can afford. The student should also know about consumer rights and some current regulations concerning contract agreements of all kinds. Use this to lead into the study of a lease and other areas of landlord-tenant contact.

PROCEDURE

1. Discuss various ways to locate property for rent -- newspaper, rental agencies, bulletin board notices, signs in yards. During discussion, list students' suggestions about questions to ask a landlord about the property and contract. Also, list the conditions of the property that a prospective renter should examine.
2. Discuss with class a copy of a rental contract; use opaque projector or handouts. Identify the parts that pertain to the tenant and to the landlord and their obligations to each other.
3. Using a copy of your local housing code, list some of the common infractions: dangerous electrical wiring, rodents, inadequate fire escapes, dangerous exit areas, unkempt grounds, faulty plumbing, kitchen appliances in disrepair. State names and addresses of those persons and agencies who can help the dissatisfied tenant: Consumer Protection Agency; Local Municipal or Housing Code; Housing Authority; attorney, etc. (See P.226)

4. Have students write a one-page description of the type of apartment they would most like to live in when they first become independent. Ask questions that would require critical analysis, i.e., can you afford the monthly rent? Can you maintain this apartment? What will you have to do before you can afford this apartment? (Answer: a steady job/income; obtain references; establish credit, etc.)
5. Have students draw up plans of a typical apartment showing a number of violations of local housing code. Have students form groups to display and discuss the violations. Choose several that seem realistic and have each group write a letter of complaint about this apartment to one of the agencies that receive consumer complaints. Have class assess letters for clarity, accuracy, correct form, etc.
6. Role playing: act out scene of mediation between tenant (holding picture of apartment), landlord (holding statement of back-rent due), and investigators from Consumer Agency (holding letter of complaint). Summarize by mentioning the different final solutions to this situation -- landlord improving apartment, landlord fined; building condemned, tenant moving to another apartment, tenant evicted, etc.

POSSIBLE PROBLEM FOR EVALUATION: Mr. Pureheart's toilet has been faulty for three months. His landlord, Mr. LeGree, has not had it repaired despite repeated requests by his tenant. Mr. Pureheart should (a) formally complain to the local government agency that licenses apartment buildings or (b) withhold his rent money until there are repairs.

PREPARATION AND RESOURCES:

1. Guides for listing activities at board:

   A. Questions for landlord
   B. Property conditions to examine
   C. Obligations of tenant
   D. Obligations of landlord
   E. Housing code infractions

2. Obtain blank lease from local rental agency. Obtain housing code at your court house.

3. Write for pamphlets from Consumer Protection Agency, HUD.

4. Write to and obtain a copy of the Georgia Building Code from: Building Codes and Safety Section, Georgia Department of Community Affairs, Suite 220, William Oliver Building, 32 Peachtree Street, N.W., Atlanta, Georgia, 30303. Phone: 404-656-5529 - Atlanta Metro area; and 1-800-282-5810 - non-local toll free number. On Page is a reproduction of the brochure from the Building Codes Section.

Codes and the Progressive Community

Georgia's permissive construction codes are designed to help protect the life, health, and property of all Georgians from the hazards of faulty design and construction; unsafe, unsound, and unhealthy structures and conditions; and the financial hardship resulting from unnecessarily high construction and operating costs of houses, buildings, and similar structures.

Local adoption of these standards is authorized by the Georgia Code, as amended, which states in part:

> *The governing authority of any municipality and the governing authority of any county in this State is hereby authorized to adopt such State minimum standard codes; to provide for the local administration of such codes; to require building permits and fixing charges therefor; and to provide for the inspection of buildings or similar structures to insure compliance with the standard codes. Said governing authorities may contract with each other or with the State to administer such codes, and to provide inspection and enforcement personnel and services necessary to insure compliance with the code.*
>
> (Ga.L.1969, pp. 546-556; Ga. Code Ann. #84-6014)

State construction codes are promulgated, amended, and revised as necessary by the Georgia Department of Community Affairs with the approval of the Board of Community Affairs. Code actions may be initiated by the department or upon recommendation from any citizen, profession, state agency, political subdivision of the state, or the codes advisory council of the department authorized by Georgia Law, Act No. 1311, of 1980, pertaining to building codes and standards.

New provisions and amendments or modifications of existing minimum standard codes require, in addition to approval by the Community Affairs Board, the endorsement of the codes advisory council.

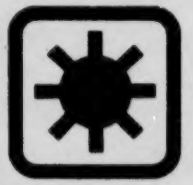
The Codes Advisory Council

The codes advisory council plays a major role in the development and review of state construction standards. The council is made up of members who are experts in the various codes areas and who are chosen to represent the diverse interests of citizens, builders, financiers, and other groups.

The Georgia Fire Safety Commissioner and the Commissioner of the Department of Human Resources, or their designees, are ex officio members of the council. The remaining members are appointed by the Commissioner of the Department of Community Affairs.

Council members appointed by the Commissioner are chosen as follows: one representative each from municipal government, county government, home builders, contractors, savings and loan institutions, the architecture profession, the consulting engineering profession, and the mobile home industry; one electrical contractor from the state at large; one building material dealer; one plumbing contractor; and one conditioned air contractor.

The codes advisory council comprises eight committees, one each in the areas of housing, building, plumbing, air conditioning, heating, electrical, gas, and energy. Staff support is provided by the Building Codes and Safety Section of the Department of Community Affairs.



Advantages to Local Adoption of State Codes

- Codes protect the life, health, and property of citizens and thus help provide a better living environment.
- Adoption of state codes helps prevent instant slums and therefore contributes to the maintenance of a stable tax base.
- By establishing the foundation for a permit system, codes provide a means of systematically updating properties assessments.
- The adoption of codes often results in lower insurance rates.
- Code adoption is often a prerequisite for federal rehabilitation grants.
- State codes include updated references to state laws and rules which may supersede national or regional model code requirements.
- Copies of state codes and periodic revisions are provided free to adopting local governments.

In short, the adoption of codes indicates a progressive local government.

Codes Enforcement Training

To assist local inspection officials in their code enforcement responsibilities, the Department of Community Affairs sponsors training programs conducted by the University of Georgia Institute of Government. In addition, the department provides on-site codes technical assistance, information, and referral services to requesting local governments.

TITLE: Courts: Small Claims Court
CATEGORY: Consumer Law
DESCRIPTION: Includes specific information on Georgia Small Claims Courts and simulation/role playing trial.
AUTHOR/EDITOR: Printed by permission: John Evans, Chairman, Law Education, Division of Instructional Planning and Development, Atlanta Public Schools, ISC.

TO TEACHERS:

DESCRIPTION: Information on the purposes, limitations and procedures of small claim courts in Georgia is presented. Short case studies of actual cases and legal forms are supplied for student activities. Court personnel and lawyers in Fulton County have edited the material for accuracy. Your county may differ in the administration of your small claims court. Check with your county personnel prior to teaching this unit.

The forms included within this unit have been edited from the actual forms commonly in use in small claims courts in Georgia. They were edited for brevity and simplicity and intended for informational purposes only.

Objectives: After completing the study of this instructional unit, student will be able to:

A. Give an accurate assessment of:
   1. What types of disputes can be taken to small claims court.
   2. The legal limitations set on small claims courts in Georgia.
   3. Make the proper determinations RE: the scope of jurisdiction.

B. Identify methods by which an issue of controversy could be fairly settled thus preventing a civil suit. List some agencies which could assist in a fair settlement.

C. Describe the procedure common to small claims court.

D. Execute simulated sample forms essential to filing for a small claims court suit accurately and completely.

RESOURCES: Each student will need copies of the section Small Claims Courts in Georgia. (P. 229)

Instructional Strategies/Student Activities:

1. Each student will need the narrative prior to initiating class activities.

2. Class discussion using the Questions for Discussion (Page 228) as a guide.

3. Problem/exercise should be read in class and forms should be distributed as needed to the students. It might prove helpful for each student to submit his/her first completed form to the instructor for evaluation prior to issuing the second form. In Forms A and C, students will have the opportunity to express in writing reasons for the complaint and counterclaim.

Evaluation: Evaluate participation in class discussion for attainment of Objectives A, B, C, and D with a teacher-made test. Attainment of Objective D can be determined by scoring the simulated forms executed by the student.

QUESTIONS FOR DISCUSSION AND DEBRIEFING THE SIMULATION:

1. What is the legal basis for the existance of a small claims court in Georgia?

2. Who can sue (and who cannot sue) in a small claims court?

3. What is the money limit for a suit in small claims court?

4. Give illustrations of the types of suits heard in a small claims court.

5. What are some of the ways one might use to try to settle a controversial issue before resorting to a suit in a small claims court?

6. What are some of the agencies which may be able to help one settle an issue prior to filing a suit?

7. What is an attachment, how is it obtained and what does it do?

8. What is a garnishment, how is it obtained and what does it do?

9. How does one go about determining in which small claims court to begin the lawsuit?

10. Be able to define:

a. complaint
b. counterclaim
c. default judgement
d. defendant
e. harass
f. judgement
g. next friend
h. plaintiff
i. summons
j. verdict

Explain the differences between the three options available in settling a dispute:

Negotiation - discussing an issue to reach a settlement.
Arbitration - submitting dispute to 3rd party whose decision is binding.
Mediation - settling between two parties.

INFORMATION FOR STUDENTS AND TEACHERS

SMALL CLAIMS COURTS IN GEORGIA

BACKGROUND:

The Small Claims Courts in Georgia are provided for by acts of the State Legislature. By this legislation, only the most populus counties are eligible for such courts.

It was the judgement of the State Legislature that the less populus counties would have difficulty in maintaining such a court financially.

In these less populus counties, the Superior and certain county courts continue to hear all small claims suits.

Small Claims Courts are limited in the money amount of a suit. Currently, the legal limit for a suit in a Small Claims Court is $299.99.

WHO CAN SUE IN A SMALL CLAIMS COURT?

Anyone having a claim against a resident or business in Georgia may sue in a Small Claims Court, provided that county has such a court (or in the Superior Court if it does not).

Some guidelines for suing in a Small Claims Court include:

A. You must sue on your own personal claim.
(Your personal injury or your own property loss.)

B. You cannot file suit in small claims court against someone because your mother, sister, aunt, etc., has a claim against a person. (A roomer owes your mother two month's back rent.)

C. A person or a company who has purchased the right to a claim may not sue in small claims court. (As a finance company buys a loan contract.)

FOR WHAT CAN ONE SUE?

Small Claims Courts are limited in what they can do for you. They can handle only claims for money and one can get a judgement of up to $299.99 plus any court costs.

This court cannot force anyone to return property (real or personal) nor can it be used by landlords to evict tenants.

Types of cases commonly brought to small claims court include:

* Tenant sues his/her former landlord for return of a security deposit.

* Homeowner sues for money damages from a plumber who did not repair his/her water pipes properly.

* Car owner sues the driver of the car who hit and damaged his/her car.

* Homeowner sues visitor who dropped a lit cigar and caused fire damage to his/her sofa.

* Student is sued because he/she accidently tripped a fellow student causing that student an injury.

* Neighbor is sued by homeowner as the neighbor borrowed a workable lawnmower and returned it in unworkable condition.

WHY YOU SHOULD TRY TO SETTLE THE ISSUE BEFORE YOU SUE

Going to court to sue is a very serious business. It will cost you both time and money. You may lose your case as well. Even if you win, you may have difficulty, or be unable, to collect the money the court says is owed you.

The court does not pay you the money if you win. You must collect the money from the person you sued. If this person does not willingly and voluntarily honor the court's judgement to pay you, you must then use additional court procedures to collect the money. There are explanations of some of the ways the court can help you collect the money owed you included in this material.

If you believe there is little or no chance of collecting your money by the ways suggested, or if you become convinced that the person you are considering suing has no money at all, you may decide that suing the person is a waste of time and money and forget about the whole issue.

One should be aware that he/she, the Plaintiff, will have to pay court costs (or fees) to use a small claims court. Also, if the person you are suing, the Defendant, files a legal claim against you (counterclaim), the judge may rule that you owe the defendant some money.

If the judge believes that you are using the court for no good reason (as to harass someone), your case may be thrown out (dismissed) and the costs you have paid lost.

The courts are available to help you get what you are owed. They should be used only as a last resort. You have nothing to lose by trying to settle the issue out of court. Attempts to settle the issue should be made before you file suit. Settlement attempts may help a judge to think of you as a reasonable person.

One of the ways you may try to settle with a person you feel owes you money is to write him/her a letter and tell him/her how much you believe he/she owes you and why. When you write such a letter, be sure to keep a copy for yourself. If you have receipts to show how much money you paid for repair of damage you believe she/he did, send him/her copies of the receipts. Make sure you keep the original receipts.

If you decide later to take this matter to small claims court, you have the copy of the letter and the original receipts to show the judge that you have tried to be reasonable and are not suing just to harass the defendant.

If your problem is with a business and not an individual, another way to try to settle without suing is to take your problem to the Better Business Bureau. The Bureau may sometimes act as a "middleman" to settle claims by agreement of both parties.

Another agency from which you might wish to request assistance is the Governor's Office of Consumer Affairs, State Capitol Building, Atlanta, Georgia. Telephone: Capitol Office -- 656-1794; Administrative Office -- 656-3790. This agency rarely acts in behalf of an individual, but if there are a number of complaints about the same business or practice, they may investigate and institute legal action.

One should keep in mind that in any proposed out-of-court settlement, you have the right to accept or reject the settlement. If you reject the out-of-court settlement or no such settlement can be offered, you can still take the issue to small claims court.

PREPARING YOUR SUIT

If you have not been able to settle your claim for money damages out of court with the person or business, you may decide that your proper course of action is to file suit in small claims court.

Before you file suit, very carefully think through your problem.

* Have you stated your problem clearly?
* Can you provide evidence to support your claim?
* Is your claim believable by someone other than yourself?

Think carefully about how you can represent yourself and protect your own interests. If you so desire, you may have a lawyer to represent you in this claim. If so, the cost of the lawyer's services may be much greater than the amount of the claim.

If order to file suit in small claims court, you will need:

* The correct legal name of the person or business you wish to sue.

* The correct address of the person or business you wish to sue.

* The amount of your filing fees in cash.

* If you are under 18 years of age, you must bring someone with you who is over 18 to act as your next friend. This next friend will formally act for you in this suit as you are a minor.

It would also be most helpful to have:

* A firm commitment as to the exact amount of money damages you wish to demand.

* Receipts and other papers which show substance to your claim.

* Copies of letters you have written to or received from the other party.

Getting the correct name of the person or business you want to sue is one of the most important steps in filing a suit. You must have the correct legal name of the person or business you wish to sue or your claim could be dismissed by the judge.

If you do sue someone or a business and use the wrong name, even though you may win the case, you probably will not be able to collect the judgement.

If you are going to sue a person, be sure to find and use his full name. A city directory or telephone book can be helpful for this. The correct trade name of a business may be more difficult to find. If you have difficulty in locating this name in a city directory or telephone book, check with the Superior Court of the County in which the business is located for assistance in locating the exact name.

You must know the correct address of the person or business you wish to sue. The correct address must lie within the jurisdiction of the small claims court. Because:

* You can use the small claims court of the county where the defendant lives - or -

* If you are suing two people who live in different counties, you could file suit in the small claims court in the county where at least one of the defendants live - or -

* If the defendant is a business, you can use the small claims court in the county where the business has an office - or -

* You can start the suit in the small claims court of the county where the problem arose.

The easiest and most trouble-free choice is to file your suit in the county in which the defendant lives. If you do this, there is no question you have filed your suit in the right court.

One under 18 years of age (a minor) can file suit in small claims court. Being a minor means that you have to take one additional step in filing your suit. You must bring someone over the age of 18 with you to serve as your "next friend" when you file suit. This person must be willing to act as your "next friend" during the suit. This "next friend" will act as and for you during the court proceedings. Often a parent will be his/her child's "next friend".

Before you go to file your suit in small claims court, you should know the money amount to be stated in your suit. The clerks at the court cannot tell you if you are owed money or for how much you should sue. That is not their job.

The amount of money you ask for in your suit must be equal to the actual damage or loss you have suffered. In order to "prove" your loss, it would be helpful to have bills and/or receipts which show your actual loss. It would be most helpful to bring any papers you feel would be helpful with you when you file your suit. Such papers could help explain your problem to the clerks and make it easier to get the forms filled out.

The small claims court is not free. You should bring with you enough cash to pay the required fees for filing suit. As of January, 1981, the cost of filing suit in small claims court in Fulton County, Georgia is $14.00 if the suit involves one defendant. There is an additional charge for each additional defendant named in the suit.

HOW TO GET THE OTHER SIDE INTO COURT

After you have filed the suit, the court will notify the defendant that you are suing. This is called serving the defendant with a summons. The defendant has 30 days to answer the suit. Should the defendant fail to answer the civil summons within the allotted time, the court has no choice but to issue a default judgement against the defendant.

COLLECTING THE JUDGEMENT

If the judge decided in your favor and awarded you, the plaintiff, an amount of money damages plus court costs, the defendant usually honors the legal obligation and pays you the money.

If the defendant is reluctant to pay you, the court will do what it can to see that you obtain full payment.

If the defendant should refuse to abide by the court's decision, that is, refuse to pay you the money, you could go back into court and have the court attach real or personal property or garnish the defendant's wages.

As a civil judgement is in effect for seven years, an attachment or garnishment could be made at any point in this time.

FOR STUDENT AND TEACHER:

CLASS ACTIVITY: THE SMALL CLAIMS COURT

Mr. Albert Green had signed a year's lease to rent an apartment from Mr. Winston Brown. According to the terms of the lease, Green was to pay Brown rent of $200 per month by the fifth day of each month. Another condition of the lease was that Green was to deposit with Brown the amount of $200 as a security deposit.

The lease began January 1st of this year. Green made all of his rent payments on time. In November of this year, Green sent Brown the December rent payment along with a letter informing Brown that he did not wish to renew the lease. Green further stated in his letter that he would be moving out of the apartment before January 1st and requested that Brown return his security deposit.

Green moved out of the apartment during the last days of December. When Green did not receive the refund of his security deposit by February 1st, he wrote to Brown and demanded the return of the security deposit.

In his letter of reply, Brown informed Green that he was not returning the $200 security deposit as needed repairs caused by Green's damage to the apartment exceeded $200.

After thinking about this matter for several days, Green decided that he had left the apartment in about the same condition it was in at the time he rented it. Green decided to sue Brown in small claims court for his money loss ($200 security deposit).

Green knows that if he wins the case, Brown will be able to pay the damages; that he has sufficient resources to cover the cost as:

1. Brown owns the apartment house.
2. Brown has a bank account as Green's cancelled rent checks show they had been deposited in a bank account.

Green went to small claims court in the county where he and Brown lived. One of the clerks assisted Green in filling out the necessary forms for filing a small claims suit. When the complaint had been filled out, the clerk assigned a number (for our example: #131415) to the completed complaint form and Green paid the required filing fee.

STEP 1

At this point, you should take the role of Green and the court clerk and fill out the proper form to begin a suit (Form A). As you are in the role of the plaintiff, use your home address. As the defendant's address, use your school's address.

The small claims court was responsible for saving a copy of the plaintiff's complaint and it was placed in the possession of the defendant, Brown. This copy was Brown's summons order to appear in court to answer Green's complaint.

STEP 2

At this point, you should take the role of Robert Thomas, Deputy Marshal. As Marshal, you serve the summons. Complete any one of the first three methods on Form B.

When the summons is served on Brown, he has, by law, 30 days to answer the plaintiff's complaint. Within a week, Brown decides that he will enter a counterclaim against Green. He goes to the small claims court and with the help of a clerk, fills out the proper form. The amount of Brown's counterclaim is $60 plus court costs.

Brown claimed that Green had carelessly stored several household chemicals in the cabinets around the kitchen sink and their spillage and seepage caused a great amount of wood rot to the floor and shelves. Brown further claimed that it cost $260 to repair the damage.

STEP 3

At this point, you should take the role of Brown and the court clerk and complete Form C for the counterclaim.

Green, of course, is provided with a copy of Brown's counterclaim. Both sides, plaintiff and defendant, have completed copies of all documents relating to the case.

The court, by postal card, notifies both parties as to the date, time and place of the trial.

STEP 4

At this point, you should take the role of the court clerk, Will E. Nilly, and complete Form D. (Trial date - March 4, this year.)

The day of the trial finally comes. The case of Green v. Brown is called by the judge. Small claims court is very informal in its procedure. Usually the judge instructs the parties to tell "their side of the issue in their own words".

First, the plaintiff presents his case. Green tells the judge why he believes Brown should pay him the $200 damages he claims. Green has brought two of his friends, Leo Tarus and Candy Capricorn, as witnesses. Both tell the judge that they helped Green move out of the apartment and that Green left the apartment in as good a condition as they each keep theirs.

Next, the defendant presents his case. Brown tells the judge why he believes he should not pay Green's claim and why the court should give him a judgment of $60. He presents as evidence a paid bill from a reputable contractor which shows that the repairs of chemical damage to the kitchen floor of the apartment in question amounted to $260. After the case has been presented and the judge has cleared up any questions he has, he will give the verdict (decision) for the case.

STEP 5

At this point, you should take the role of the judge, Gaston Powers, and complete Form E.

FORM A

SMALL CLAIM CASE -- NOT OVER $299.99

GEORGIA)
FULTON COUNTY)

In the State Court of Fulton County
(Civil Division)
Small Claims Division
160 Pryor Street, S. W.
Atlanta, Georgia

COMPLAINT
CASE NUMBER:_____

_____
PLAINTIFF

_____
PLAINTIFF'S ADDRESS

VS.

_____
DEFENDANT

_____
DEFENDANT'S ADDRESS

Plaintiff sues Defendant for the sume of $_____

plus court cost by reason of:_____

_____

_____

If you claim that you do not owe this amount, you must come to the CLERK OF THE STATE COURT OF FULTON COUNTY no later than 30 days after date of service and sign an appearance card stating that you will appear to defend this case. If you do not sign an appearance card, judgement may be taken against you in the amount set out above, plus court costs.

The Marshal of the Court, His Lawful Deputies and all Lawful Constables of said State are directed to serve a copy of this summons upon the named defendant in the manner provided by law.

Witness the Honorable Gaston Powers, Chief Judge of said Court.

This _____ Clerk_____

You were served a copy of this complaint on _____ 19_____

_____Deputy Marshal

FORM B

GEORGIA, FULTON COUNTY

I have served the defendant _____
_____
personally with a copy of the within summons at _____A.M./P.M.
This _____, 19____.

_____Deputy Marshal

GEORGIA, FULTON COUNTY

Served the defendant, _____,
a Corporation,_____
by leaving a copy of the within action and summons with _____
_____ in charge of the office and place of
doing business of said corporation, in Fulton County, Georgia at _____
A.M./P.M.
This _____, 19____.

_____Deputy Marshal

GEORGIA, FULTON COUNTY

I have this day served the defendant_____
_____
by leaving a copy of the action and summons at his most notorious place
of abode in the County. Delivered same into the hands of _____
_____, a person described as follows: Age, about _____
years; weight, about _____pounds; height, about _____feet and ___ inches,
domiciled at the residence of defendant at _____A.M./P.M.
This _____, 19____.

_____Deputy Marshal

GEORGIA, FULTON COUNTY

Diligent search made and defendant_____
not to be found in the jurisdiction of this Court.
This _____, 19___.

_____Deputy Marsha

(This form is printed on the back of the copy of Form A retained by the Court.)

FORM C

SMALL CLAIMS CASE -- NOT OVER $299.99

GEORGIA, FULTON COUNTY

In the State of Court of Fulton County
(Civil Division)
Small Claims Division
160 Pryor Street, S. W.
Atlanta, Georgia

COUNTERCLAIM
CASE #_____

_____
PLAINTIFF

_____
PLAINTIFF'S ADDRESS

VS.

_____
DEFENDANT

_____
DEFENDANT'S ADDRESS

Defendant countersues Plaintiff for the sum of $_____

plus court cost by reason of _____

_____

_____

_____

If you claim that you do not owe this amount, you must sign an appearance card stating that you will appear to defend this case, within 30 days of the service of this notice.

The Marshal of the Court, His Lawful Deputies and all Lawful Constables of said State are directed to serve a copy of this summons upon the named plaintiff in the manner provided by law.

Witness the Honorable Gaston Powers, Chief Judge of said Court.

This_____ _____Clerk

FORM D

NOTICE OF TRIAL AND APPEARANCE CARD

PLAINTIFF NOTICE

_____

VS.

_____

The trial for the above case will be held on:

_____,19_____
ROOM 372 at 9:30 A.M.

Will E. Nilly, Clerk
State Court, Fulton County

CASE NO._____

DEFENDANT NOTICE

_____

VS.

_____

The trial for the above case will be held on:

_____, 19_____
ROOM 372 at 9:30 A.M.

Will E. Nilly, Clerk
State Court, Fulton County

CASE NO._____

APPEARANCE CARD

_____

VS.

_____

CASE NO._____

I, _____
will appear as plaintiff in this case on _____, 19___

_____
PLAINTIFF

APPEARANCE CARD

_____

VS.

_____

CASE NO._____

I, _____
will appear as defendant in this case on _____, 19___

_____
DEFENDANT

FORM E

JUDGEMENT

_____ CASE NO._____

VS.

_____

_____ I find for the plaintiff in the amount of $_____, plus court costs.

_____ I find for the defendant on his counterclaim in the amount of $_____, plus court costs.

____ I find for the defendant in that the plaintiff has no cause for action.

This_____, 19____

_____
GASTON POWERS, JUDGE

Recorded and filed

_____
WILL E. NILLY, CLERK

It is ordered that the above defendant pay to the above plaintiff the sum of $_____, plus court costs.

This _____, 19_____ _____
GASTON POWERS, JUDGE

TITLE: Wheels
CATEGORY: Consumer and Practical Law
DESCRIPTION: Students explore legal issues and answers related to owning and operating automobiles.
AUTHOR/EDITOR: Walter M. Perkins and Lisa Broido
PUBLISHER/SCHOOL DISTRICT: Reprinted from Update on Law-Related Education by permission of the American Bar Association. "Wheels" by Walter M. Perkins and Lisa Broido, pages 51-56, Fall, 1979.

TO TEACHER: You will need to provide each student with a copy of the Update article, "Wheels".

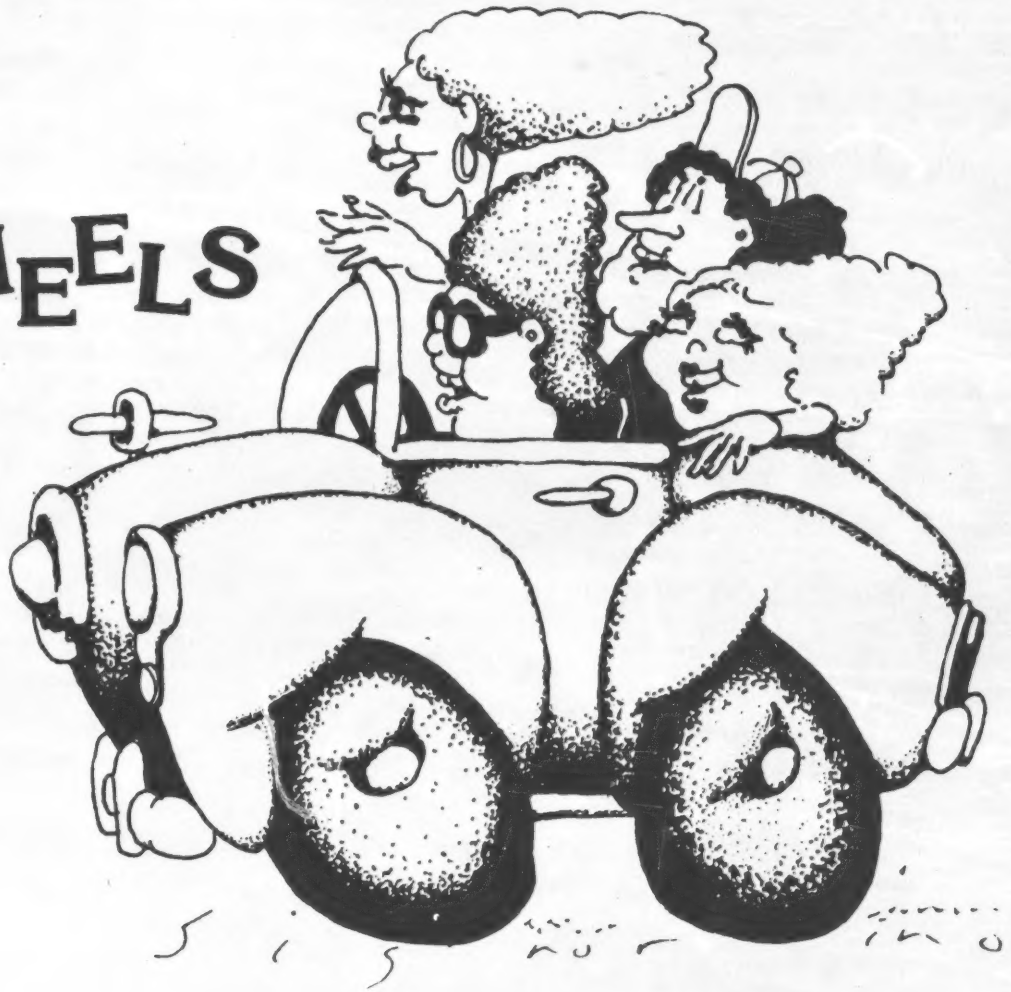
CAUTION TO TEACHERS: This article for teenagers covers consumer law, juvenile law, 4th Amendment Rights, etc. All are related to owning and operating automobiles. Local state law modifies each of these Sections. Be certain that you consult with a Georgia lawyer or police officer prior to stating that the specifics are applicable in Georgia.

Instructions:

Students can read discuss the article with legal consultants or can be divided into groups and assigned one problem to investigate with local authorities.

PRACTICAL LAW

Walter M. Perkins and Lisa Broido



A player who runs out onto a football field without knowing the game's rules will probably end up with some broken bones. And a kid who goes out into the world without knowing the law will most likely come back bruised.

A recent poll revealed that **Update** readers would like to see the magazine emphasize practical law skills that young people need to know. They want to teach their students how to play the game of law in the **U.S.**

Well, here it is fans! The practical law section of **Update will** take a no-nonsense look at important areas of the law that youths can apply to their everyday lives. This inaugural section deals with a topic that is uppermost in the minds of most adolescents—WHEELS. It discusses how a minor can get rid of a "lemon," what to do after an accident, how the law handles teenagers who abuse their driving privileges, and much more.

We'll be doing practical law sections in forthcoming issues. Let us know what topics you'd like to see us cover.

WHAT TO DO ABOUT THAT LEMON

The used car salesman in our society is generally portrayed as a fast-talking, cigar-smoking slickster in a loud checkered sportscoat who tells his customers that his cars are real "cream puffs" that were "only driven to church on Sunday." Although this stereotype is probably unfair, plenty of kids still get stuck with "lemons on wheels" when they buy their first cars. And even worse, they don't know what kind of legal action to take once they have been taken for a bum ride.

Most courts used to follow the rule of caveat emptor - Latin for "let the buyer beware." If someone bought something that was worthless or defective, it was his tough luck. Today the laws are designed to safeguard consumers--particularly if they are minors.

For example, the courts try to protect inexperienced young people from shady business transactions by making it easier for them to get out of contracts. If a person under the age of 18 contracts with an adult, he can "disavow" the agreement with few hassles as long as it does not involve "necessities" like food or clothes.

Thus, if Joe Minor is unhappy with the used VW he got from E-Z Motors, he can return it at any time because it is not considered a basic necessity. He can take it back for any or no reason at all, regardless of whether he lied about his age when making the contract.

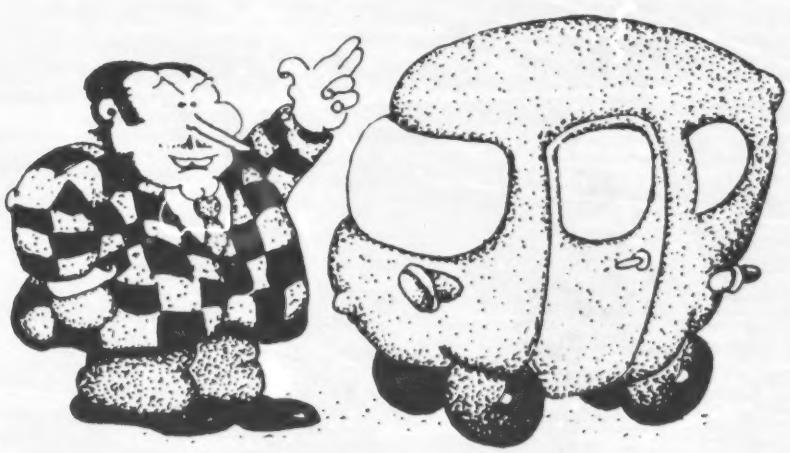
The catch is that the most streetwise adults won't take the risk of contracting with a minor. Most sellers will insist that an automobile be purchased in the name of a parent, guardian, or other adult who is willing to take on full responsibility for it.

Let's say that Joe has his dad sign for the car. Can he and his father still return it if it expires a few days after they buy it? The answer to this query is a qualified yes. A number of protections are available to consumers like Joe and his dad in the form of warranties. Warranties are written or oral guarantees of the quality and/or performance of products that are sold.

Joe and his dad must be careful to read their contract carefully -- small print and all -- in order to know what kind of guarantees they can expect for their car. They should also feel free to negotiate with the dealer and suggest new clauses which can be added to the contract. If the dealer won't stand behind his product (or at least give a price that reflects this fact), they should take their business elsewhere.

Most salesmen make specific promises about the products they sell. These promises are called express warranties. These guarantees can be either written or oral, but the latter is extremely difficult to prove. Salestalk, or "puffing" as the courts call it, is not considered to be an express warranty. Thus, if a dealer tells you that an engine "purrs like a kitten," he's not really making a promise. If he makes a specific claim -- telling you that a car will get 35 miles per gallon when it only gets 12 -- you may have a good case, but it's still best to get everything in writing. After all, it's your word against his.

What if the car dealer made no promises to Joe and his dad, either orally or in writing? They may still be protected. The Uniform Commercial Code provides that certain warranties must be "implied." Implied warranties are imposed in order to promote higher business standards. Every seller, whether a professional dealer or your next-door neighbor, must offer a general warranty of "merchant-ability" which guarantees that the product can be used the way it is supposed to be. Unless the dealer "disclaimed" his warranty by clearly stating (either orally or in writing) that he didn't guarantee that it would run but would sell it "as is," Joe is entitled to a working car.



There are several courses of action that Joe and his father can take if they get stuck with a sickly "Bug." They should start by going directly to the dealer and trying to informally settle things with him. If this doesn't work, however, there are some federal agencies where they can go for help. The Department of Transportation's National Highway Safety Administration has a toll free hotline for auto consumer complaints at (800) 424-9393. Consumer Products conducts a hotline at (800) 638-2666, and there is an Auto-Recall hotline at (800) 424-9323.

Every state also has local agencies that disappointed car buyers can contact. A Chicagoan who buys a car that doesn't live up to the dealer's promises, for example, can report this to the Consumer Fraud and Protection Division of the Illinois Attorney General's Office. There, a hearing officer will try to resolve the matter out of court with both parties. And if this fails, the state may take the seller to court under the Consumer Frauds Act or other Illinois laws. That would subject the dealer to criminal penalties.

If the state won't prosecute, you still have the option of filing a civil suit against the seller. Law suits, however, should always be the last resort. They are expensive, time consuming and messy. If all else fails, though, an unhappy consumer can sue the seller for "breach of contract" or "misrepresentation" if he fails to live up to his end of the bargain. The consumer can even go as far as suing the manufacturer itself if the maker's negligence may have contributed to the car's defectiveness.

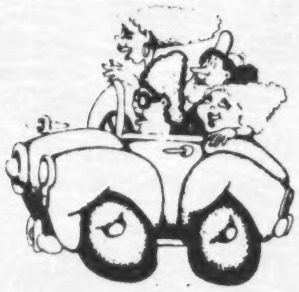
Can the law always protect you from lemons? No, not completely. Many minors and adults get shafted on cars every day. But the law is making it harder for sellers to "sting" their customers, and giving buyers -- whether minors or adults -- a fighting chance.

WHY INSURANCE COMPANIES PENALIZE YOUNG DRIVERS

Everyone knows that skyrocketing gas prices are taking all the joy out of driving, but many of us forget that young drivers face an even bigger obstacle to fun on wheels -- the enormous price of car insurance. Young people under 21 often pay more than $1,000 annually for complete coverage.

a family car on a parttime basis, the easiest way for them to save money is to be added to their parents' policy instead of carrying a policy of their own. If they do have their own car, they could marry, live in a rural area (fewer accidents), have a low annual mileage rate, have a good driving record, and not drive to work.

But maybe kids should just stop worrying about insurance. With the gas situation as it is, insurance rates may soon become a moot point anyway.



WHAT TO DO AFTER AN ACCIDENT

You never expect it to happen, but someday you'll probably be involved in a car accident. According to the National Safety Council, approximately 30 million motorists had accidents in 1977. And nearly one-fifth of these accidents involved drivers who were under the age of 20.

Amid the post-collision excitement of the piercing sirens and flashing lights, many drivers end up saying and doing things that lead to unnecessary legal actions, big financial losses, or even jail sentences. Thus, no matter how shaken up you might be, try to follow these recommended post-accident DO's and DON'T's.

DO's

* Stop at the scene of the accident. Remember hit-and run driving is a serious crime which is punishable by prison or fines, even if you were innocent of causing the accident. If you panic and drive away, go back to the scene of the crime as soon as you get yourself together. Such an action may mitigate the penalty you will receive fro skipping out at first.

* Notify the police immediately if someone is injured or killed.

* Try to get the names and addresses of as many witnesses as possible. Also take down the badge number of police officers and the names and addresses of any doctors and ambulance drivers who may be there.

Why do they have to pay so much? How are the rates determined? What can they do about them?

Insurance rates are determined by actuaries, who calculate them on the basis of the accidents that have occurred in the past. The differing rates that drivers pay are arrived at via a classification system which is based on objective criteria like (1) age, (2) sex, (3) marital status, (4) age of car, (5) whether or not car is used in driving to work, and (6) geographical location.

Why do the young have to pay more for car insurance? Well, research indicates that younger persons, particularly below the age of 21, are simply involved in more accidents. Reasons for this are legion. A recent report by the Organization for Economic Cooperation and Development indicated that, "the maturing process of the adolescent is, generally speaking, far from being complete at the age of 18." Their immaturity shows in "egocentricity, lack of self-discipline, and the search for an outlet to work off energy and emotions."

While young people in general pay astronomic rates, young men pay even more than young women. In fact, sex and marital status are considered secondary classifiers after age and can either drive the rate you pay up or down.

A recent study by the National Association of Independent Insurers indicated that losses incurred by young male drivers are 41 percent more than losses of young female drivers. Additionally, young single male drivers incur losses which are 84 percent more than losses of young married male drivers.

But what about the kid who's in a highrisk category but has a good driving record? Shouldn't he be exempt from the higher rate? Isn't the classification system unfair to him? Insurance companies feel that ending the classification system wouldn't work, and point out that costs would actually be increased for the majority of motorists who are in low-risk categories.

For example, a report of the National Association of Independent Insurers shows that "if sex and marital status were eliminated as classification criteria, rates for young female drivers would have to increase 29 percent in order to subsidize the losses of young single males."

If all of this sounds depressing, it is. However, John Schreiner of Allstate says that even if young pecple fall into a highrisk category, they can do some things to lower their insurance rates. Since most youngsters drive

* Exchange driver's licenses, registration certificates, and insurance company information with the other driver. Get the names and addresses of any passengers or pedestrians who might have been involved.

* Contact your insurance agent and/or the other owner's agent as soon as possible.

* If possible, try to have pictures taken of the damaged cars, skid marks, or other physical evidence.

* If you collide with an unattended vehicle, try to find the owner. If that's not possible, leave a note with your name and address.

* Fill out accident reports carefully. All states require that accident reports be filled out in case of injury or death, and reports are also required if the property damage is in excess of $50 to $300 (depending upon the state). Be sure to include the location and time of the accident, the extent of injuries and damages, the names and addresses of all persons involved, etc.

DON'T's

* Don't make any statements to police, motorists, bystanders or anyone until you have consulted a lawyer. When your emotions are running high, you are prone to say things that are distorted and self-incriminating. Take the fifth.

* If you are the victim of an accident, absolutely do not accept any money. The extent of your injury or damage may be greater than you think, and you may be entitled to more than you realize. Accepting cash may be regarded by the law as a full settlement of your claim. Don't be tempted by the green stuff.

* Don't sign anything without the advice of a lawyer. Insurance adjusters will try to get you to settle your claim at the lowest possible cost. Even if a settlement sounds like a good one, hold out for a while. Don't believe adjusters who tell you that you are "holding things up" and "may end up with nothing".

* Don't do anything without consulting a doctor. Even if you think that you aren't hurt, you should make sure. Whiplash injuries to the neck and spinal cord, which may eventually cripple, can show up days or weeks after an accident. Hairline fractures are not always evident right away. Don't accept a settlement until you are absolutely sure that no complications will arise. Once you sign a release form, it may be impossible to reopen the case if your injuries become more serious.

COPS AND CARS: WHAT ARE YOUR RIGHTS?

As your students and their friends cavort about town on their wheels, have they had occasion to pause and reflect on how the Fourth Amendment applies to drivers and passengers? Probably not.

Like most young adults, they probably have never given the fourth a second thought. However, since the overwhelming number of police/citizen confrontations involve cars, they should know what their rights are and how the fourth applies.

In general, the Fourth Amendment prohibits unreasonable searches and seizures, and sets up requirements for search warrants. To put teeth into the Fourth Amendment, judges refuse to accept illegally seized evidence, even if it clearly implicates the accused. This exclusionary rule has caused plenty of controversy.

Simple, right? Wrong. As in all constitutional areas the Fourth Amendment only gives general, minimum guidelines that must be followed.

Whether a motorist, his vehicle, or passengers can be seized or searched depends on the reasons for the initial stop. If the original stop is unlawful, any search of people or the vehicle is unlawful too. Here are some hypothetical situations which will show you what can and cannot be done.

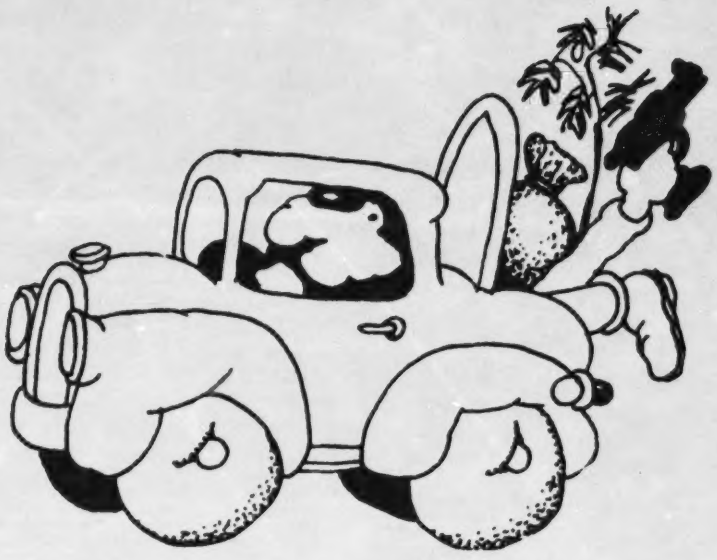
* Hypo #1. Paul and some friends are cruising the streets of a low crime area at a slow but lawful speed, observing all traffic rules. This particular area has had a run of unsolved burglaries over the past few weeks. Noticing that a policeman is observing him from behind, Paul slows down and begins glancing nervously in his rear view mirror.

The policeman pulls up and orders him to stop. Is an arrest and subsequent search of Paul and his car lawful? The Supreme Court says no. The Fourth Amendment was designed to prevent arbitrary searches, so investigatory stops must be based on reasonable grounds of suspicion. Since there were no adequate grounds in this case, any contraband found on Paul, his friends, or in his car would be excluded at trial via the exclusionary rule.

* Hypo #2. Sylvester's car stalls at an intersection. A traffic policeman comes over to assist him and notices a bag of what appears to be marijuana on the seat. He arrests Sylvester and searches him and the vehicle, including the locked glove compartment and trunk. He finds an unregistered .38 in the glove compartment and a suitcase full of more marijuana in the trunk.

Sylvester thinks the searches are illegal, but he's only half right. Under the circumstances, the body search and searches of the open areas in his car under his immediate control would be upheld. Although he was not initially observed doing anything illegal or acting suspiciously, Sylvester's carelessness with the grass triggered the plain view doctrine and gave the policeman the right to lawfully arrest and search him. Since the policeman was where he had a lawful right to be (outside of the car looking in) and since the grass was in plain view, Sylvester's expectation of privacy was lost.

However, the warrantless search of the glove compartment and trunk would probably not be upheld, since they were not under his immediate control and the police could have waited and gotten a search warrant from a judge. The rationale is that the police have a right to protect themselves by searching the areas immediately around the suspect, in case he has a weapon. Since a weapon in a locked glove compartment or trunk is no threat, they'd have to get a warrant.



* Hypo #3. Silas is weaving merrily down the street, traffic laws and street signs the last thing on his mind, when he runs a red light and is arrested. Can he or his car lawfully be searched?

The Supreme Court has said that since an arrest based on probable cause is lawful, a body search incident to that arrest is also valid. It's not clear whether a search of the car itself would be lawful.

Some local jurisdictions, notably New York, have been questioning the propriety of arresting, not to mention searching, traffic offenders. Justice Potter Stewart has indicated that arrests for traffic violations may be unreasonable under the Fourth Amendment. Thus far, the Supreme Court has not agreed.

* Hypo #4. Simon is driving down the street, minding his own business. A policeman, who had previously received a tip from an informant that Simon is carrying a loaded handgun, pulls him over and orders him out of the car. As he's getting out, the policeman sees the handgun in his belt and arrests him. He then searches Simon and his car and finds stolen goods in both places. Is this a valid search?

As long as the search was timely in relation to the arrest and as long as the policeman could demonstrate that he had previous valid reasons for believing the informant was reliable, it would be considered lawful. Failing to demonstrate the reliability of the informant would mean that the policeman lacked probable cause and the arrest and search would be invalidated.

By the way, the law may be getting tougher on passengers. The Supreme Court recently upheld a New York law allowing a jury to assume that an illegal weapon found in a vehicle belongs to all occupants, unless it is found in the possession of one particular person. We can assume, at least at this point, that this law will be interpreted to include other types of contraband as well.

One last point. How should your students act when the cops stop and search them? They ought to remember that the streets are not a good place to challenge what they believe to be an unlawful search. If they squawk loudly about their rights, they are apt to make the cops even more suspicious. It is best to remain calm, observe carefully, and later record exactly what happened.

Q's&A's

CAN DADDY TAKE THE T-BIRD AWAY?

Probably. If it's daddy's car, he has a right to say who can and cannot drive it. Even if junior paid for the car, most of the time dad has had to co-sign for it, so legally it's his. And even if a minor legally owns the car and pays for all its expenses out of his own pocket, his folks can usually have his license revoked if they want to. Many states require that a parent or guardian sign the application for a learner's permit or driver's license of a person who is under 18 years of age. Thus, according to the Uniform Vehicle Code, any person who has signed the application of a minor can request that it be revoked.

There is one drastic measure a youth can take to still have "fun, fun, fun" in his T-Bird -- he can get married. Most states free minors from parental control of their licenses if they tie the knot.

WHAT CAN YOU DO IF YOU GET CAUGHT IN A SPEED TRAP?

Not much. Any driver who has ever received a speeding ticket will probably tell you he was rooked. However, some small towns really do deliberately try to trap unwary drivers with unexpectedly low speed limits on certain stretches of road. Auto clubs have waged bitter campaigns against such money-making gambits for years, but they continue to thrive. If a patrolman pulls you over for a seemingly unjust speeding violation, you can't do much but pay up. If the speed limit was clearly posted, you can't break the law no matter how unreasonable you think it may be. The only thing you can do is report it to an auto club or state authorities, so that others might not be trapped in the future.

IS IT THUMBS DOWN FOR THE THUMBER?

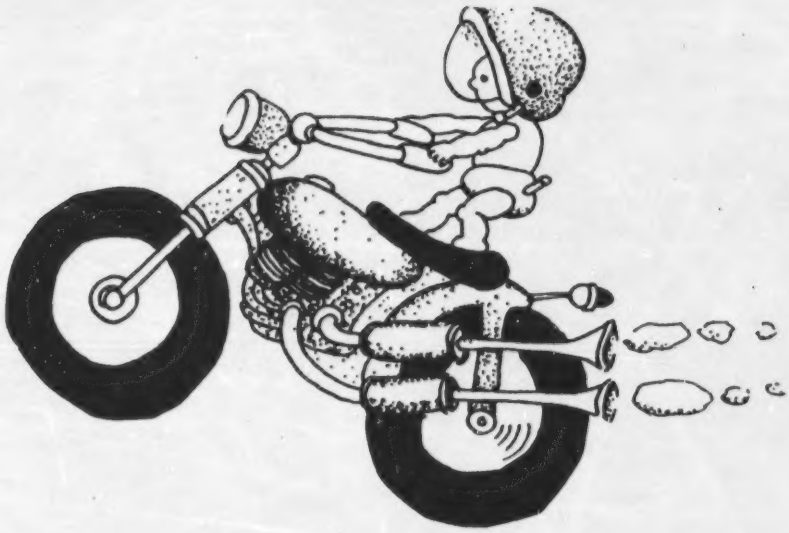
Yes and No. According to the Uniform Vehicle Code, hitchhiking is legal in almost every state provided that you don't stand on the "improved roadway". In other words, a person can thumb a ride at his own risk if he remains on the shoulders of the road and does not interfere with traffic in any way. However, hitchhiking on highways and freeways is always out.

ARE MINORS #1 WITH RENT-A-CAR COMPANIES?

No! In fact, they aren't even in the running. None of the national car rental agencies leases automobiles to persons under 21 years old. A parent or adult who rents a car in his own name and then allows a youth to drive it will not be covered by the company's insurance policy. In the event of an accident, the adult will be held liable for any damages the youth causes. And O.J. Simpson will not come running to the rescue.

MUST YOU BUCKLE UP?

In most states, your conscience is the only thing that can force you to fasten your safety belt. Puerto Rico and Brook Park, Ohio are the two places in the United States which require seat belts by law. Despite statistics showing that over 25 percent of all auto fatalities could have been prevented with seat belts, John Q. Public won't sit still for a law forcing him to buckle up.



IS RIDING A MOTORBIKE WITHOUT A HELMET AGAINST THE LAW OR SIMPLY HARDHEADED?

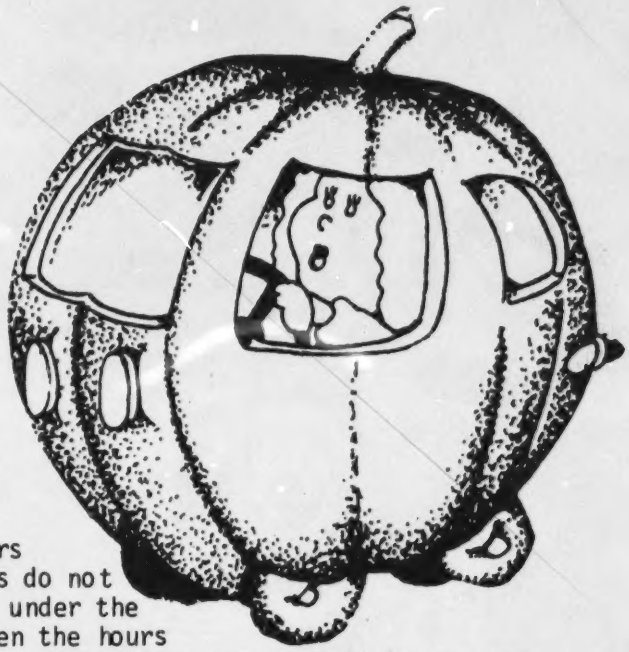
It's always hardheaded, but whether it is illegal varies from state to state. It also can depend on one's age. Some state courts have held that it is a constitutional exercise of police power to require the wearing of safety helmets. An injured motorcyclist, they argue, may endanger others on the highway. Other state courts have overturned helmet laws. The Illinois Supreme Court, for example, acknowledged the importance of helmet wearing in a 1969 case, but added that it could not "...justify the regulation of what is essentially a matter of personal safety."

Thanks to the lobbying of motorcycle groups, many state legislatures have recently revoked their helmet laws. But stricter laws may still apply to kids, since some states have amended their helmet laws to cover only persons under age 18. By the way, motorcycle fatalities have doubled in those states which have revoked their helmet laws.

IS IT ILLEGAL TO ABANDON A JUNKER?

Yes. In an effort to protect the environment, many states now forbid you to get rid of your old clunker on their property. Abandoning your motor vehicle illegally for more than 48 hours (the exact time varies from state to state) is usually considered to be a misdemeanor. Authorities are permitted to tow the car away at your expense. If the car is new, they must make an attempt to contact the owner, but if it is very old, they don't always have to. After 15 days (this varies, too), they can sell your discarded car at a public auction and put the proceeds in their treasury.

CAN A CAR TURN INTO A PUMPKIN AT MIDNIGHT?



Not exactly, but it can turn into a headache. Remember how Cinderella's coach changed into a pumpkin as the clock struck twelve? Well, something like that happens to thousands of young drivers every night. Many states do not allow teenagers who are under the age of 18 to drive between the hours of midnight and 5:00 A.M. unless there is an adult in the car or an emergency that makes it necessary for the minor to drive. Violating this rule can lead to the suspension of a youngster's license for 30-60 days. Repeat offenders can even have their licenses revoked until their 18th birthday. There is no additional fine for leaving glass slippers behind.

CAN A COP TAKE YOUR BLOOD AND BREATH?

Yes. According to the "implied consent law", which is in force throughout the country, if a person is issued an operator's license he has automatically agreed to have his blood, urine, or breath tested to determine his sobriety. A police officer has a right to ask a driver to take a test if he has "reasonable grounds" to believe that the motorist has been drinking. A driver cannot be forced to take such a test, but if he refuses his license can be revoked or suspended for up to six months. Under many state laws, drivers have up to 90 minutes to decide whether to submit to testing and can consult an attorney during this time. That may be a sobering experience.